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THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA,)
)
Government,) CASE NO. 4:21-cr-289-O
)
VS.) FORT WORTH, TEXAS
)
HOLLIS MORRISON GREENLAW)
(1), BENJAMIN LEE WISSINK)
(2), CARA DELIN OBERT (3),)
JEFFREY BRANDON JESTER)
(4),)
)
Defendants.)

January 20, 2022

VOLUME 8
TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE REED C. O'CONNOR
UNITED STATES DISTRICT COURT JUDGE

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I N D E X

JURY CHARGE 1453

CLOSING ARGUMENTS

By Ms. Eggers 1484

By Mr. Pelletier 1509

By Ms. Goodman 1522

By Mr. Stephens 1535

By Mr. Lewis 1556

By Ms. Eggers 1572

1 - P R O C E E D I N G S -

2 THE COURT: Please be seated.

3 Okay. Ladies and gentlemen, I have one final
4 instruction to give to you that I neglected to give to you
5 during the trial.

6 So to the extent the parties reference Exhibit 64A
7 this morning, or to the extent you look at it during your
8 deliberations, Exhibit 64A may not be used to contradict the
9 terms of any final written agreement and is not offered to
10 do so.

11 You may consider Exhibit 64A to determine whether
12 defendants encountered the restrictions placed on the line
13 of credit to prove intent.

14 So remember that on Exhibit 64A.

15 Now we're ready, both sides have rested and
16 closed, so we're ready to begin the final phase of the
17 trial. And that is, I will read to you the jury charge.

18 So members of the jury, in any jury trial there
19 are, in effect, two judges. I am one of the judges; the
20 jury is the other. It is my duty to preside over the trial
21 and to decide what evidence is proper for your
22 consideration.

23 It is also my duty, at the end of the trial, to
24 explain to you the rules of law that you must follow and
25 apply in arriving at your verdict.

1 First, I will give you some general instructions
2 which apply in every case, for example, instructions about
3 burden of proof and how to judge the believability of
4 witnesses. Then I will give you some specific rules of law
5 about this particular case. And finally, I will explain the
6 procedures you should follow in your deliberations.

7 You, as jurors, are judges of the facts. But in
8 determining what actually happened, that is, in reaching
9 your decision as to the facts, it is your sworn duty to
10 follow all the rules of law as I explain them to you.

11 You have no right to disregard or give special
12 attention to any one instruction or to question the wisdom
13 or correctness of any rule I may state to you. You must not
14 substitute or follow your own notions or opinions as to what
15 the law is or ought to be. It is your duty to apply the law
16 as I explain it to you, regardless of the consequences.

17 It is also your duty to base your verdict solely
18 upon the evidence received during the trial and the law as
19 given and explained to you by the Court, without prejudice
20 or sympathy. That was the promise you made and the oath you
21 took before being accepted as the jurors, and the Court and
22 the parties have the right to expect nothing less.

23 The indictment or formal charge against a
24 defendant is not evidence of guilt. All defendants are
25 presumed by the law to be innocent. A defendant begins with

1 a clean slate. The law does not require a defendant to
2 prove his or her innocence or produce any evidence at all,
3 and no inference whatever may be drawn from the election of
4 a defendant not to testify.

5 The government has the burden of proving each
6 defendant guilty beyond a reasonable doubt. And if it fails
7 to do so, you must acquit any defendant whose guilt has not
8 been proven beyond a reasonable doubt. While the
9 government's burden of proof is a strict or heavy burden, it
10 is not necessary that any defendants' guilt be proved beyond
11 all possible doubt. It is only required that the
12 government's proof exclude any reasonable doubt concerning a
13 defendants' guilt.

14 A reasonable doubt is a doubt based upon reason
15 and common sense after careful and impartial consideration
16 of all the evidence in the case. Proof beyond a reasonable
17 doubt, therefore, is proof of such a convincing character
18 that you would be willing to rely and act upon it without
19 hesitation in making the most important decision of your own
20 affairs.

21 As I told you earlier, it is your duty to
22 determine the facts. To do so, you must consider only the
23 evidence presented during the trial. Evidence is the sworn
24 testimony of the witnesses, including stipulations and
25 exhibits. The questions, statements, objections, or

1 arguments made by the lawyers are not evidence.

2 The function of the lawyers is to point out those
3 things that are most significant or most helpful to their
4 respective sides of the case. And in doing so, to call your
5 attention to certain facts or inferences that might
6 otherwise escape your final notice.

7 In the final analysis, however, it is your own
8 recollection and interpretation of the evidence that control
9 in this case. What the lawyers say is not binding upon you.

10 During the trial, I sustained objections to
11 certain questions and exhibits. You must disregard those
12 questions and exhibits entirely. Do not speculate as to
13 what the witness would have said if permitted to answer the
14 question or as to the contents of an exhibit. Your verdict
15 must be based solely on the legally admissible evidence and
16 testimony.

17 Also, do not assume from anything I may have done
18 or said during the trial that I have any opinion concerning
19 any of the issues in this case. Except for the instructions
20 to you on the law, you should disregard anything I may have
21 said during the trial in arriving at your own verdict.

22 In considering the evidence, you are permitted to
23 draw such reasonable inferences from the testimony and
24 exhibits as you feel are justified in the light of common
25 experience. In other words, you may make deductions and

1 reach conclusions that reason and common sense lead you to
2 draw from the facts which have been established by the
3 evidence.

4 Do not be concerned about whether the evidence is
5 direct evidence or circumstantial evidence. You should
6 consider and weigh all of the evidence that was presented to
7 you.

8 Direct evidence is the testimony of one who
9 asserts actual knowledge of a fact, such as an eyewitness.
10 Circumstantial evidence is proof of a chain of events and
11 circumstances indicating that something is or is not a fact.

12 The law makes no distinction between the weights
13 to be given either direct or circumstantial evidence. But
14 the law requires that you, after weighing all of the
15 evidence, whether direct or circumstantial, be convinced of
16 the guilt of a defendant beyond a reasonable doubt before
17 you can find him or her guilty.

18 I remind you that it is your job to decide whether
19 or not the government has proved the guilt of each
20 defendant, individually, beyond a reasonable doubt. In
21 doing so, you must consider all of the evidence. This does
22 not mean, however, that you must accept all of the evidence
23 as true or accurate.

24 You are the sole judges of the credibility or
25 believability of each witness and the weight to be given to

1 the witness's testimony. An important part of your job will
2 be making judgment about the testimony of witnesses,
3 including the defendants who testified in this case.

4 You should decide whether you believe all, some
5 part, or none of what each person had to say, and how
6 important that testimony was.

7 In making that decision, I suggest that you ask
8 yourself a few questions: Did the person impress you as
9 honest? Did the witness have any particular reason not to
10 tell the truth? Did the witness have a personal interest in
11 the outcome of the case? Did the witness have any
12 relationship with either the government or the defense? Did
13 the witness seem to have a good memory? Did the witness
14 clearly see or hear the things about which he or she
15 testified?

16 Did the witness have the opportunity and ability
17 to understand the questions clearly and answer them
18 directly? Did the witness's testimony differ from the
19 testimony of other witnesses? These are a few of the
20 considerations that will help you determine the accuracy of
21 what each witness said.

22 Hollis Greenlaw, Cara Obert, and Brandon Jester
23 have testified. Their testimony should be weighed and their
24 credibility evaluated in the same way as that of any other
25 witness.

1 Your job is to think about the testimony of each
2 witness you have heard and decide how much you believe of
3 what each witness had to say. In making up your mind and
4 reaching a verdict, do not make any decision simply because
5 there were more witnesses on one side than on the other.

6 Do not reach a conclusion on a particular point
7 just because there were more witnesses testifying for one
8 side on that point. You will always bear in mind that the
9 law never imposes upon a defendant in a criminal case the
10 burden or duty of calling any witness or producing any
11 evidence.

12 Whether a defendant has offered evidence of good
13 reputation for opinion testimony -- this should be "or,"
14 right? Is that right? Whether a defendant is offered
15 evidence of good -- good general reputation or opinion
16 testimony?

17 MS. EGGERS: Yes, your Honor.

18 MR. STEPHENS: Yes, your Honor.

19 MS. GOODMAN: Yes.

20 THE COURT: All right. So let me start over with
21 that sentence. I found a typo.

22 Where a defendant has offered opinion -- has
23 offered evidence of good general reputation or opinion
24 testimony concerning truth and veracity, honesty and
25 integrity, or character as a law-abiding citizen, you should

1 consider such evidence, along with all the other evidence in
2 the case.

3 Evidence of a defendants' character, inconsistent
4 with those traits of character ordinarily involved in the
5 commission of the crime charged, may give rise to a
6 reasonable doubt, since you may think it improbable that a
7 person of good character with respect to those traits would
8 commit such a crime.

9 The testimony of a witness may be discredited by
10 showing that the witness testified falsely or by evidence
11 that, at some other time, the witness said or did something
12 or failed to say or do something, which is inconsistent with
13 the testimony the witness gave at this trial.

14 Earlier statements of a witness were not admitted
15 in evidence to prove that the content of those statements
16 are true. You may not consider the earlier statements to
17 prove that the content of an earlier statement is true; you
18 may only use earlier statements to determine whether you
19 think the earlier statements are consistent or inconsistent
20 with the trail testimony of the witness and therefore,
21 whether they affect the credibility of that witness.

22 If you believe that a witness has been discredited
23 in this manner, it is your exclusive right to give the
24 testimony of that witness whatever weight you think it
25 deserves.

1 During the trial you heard testimony of certain
2 witnesses who expressed opinions concerning various
3 scientific, technical, or other matters involving
4 specialized knowledge.

5 If scientific, technical, or other specialized
6 knowledge might assist the jury in understanding the
7 evidence or in determining a fact in issue, a witness
8 qualified by knowledge, skill, experience, training, or
9 education may testify and state an opinion concerning such
10 matters.

11 Merely because such a witness has expressed an
12 opinion does not mean, however, that you must accept this
13 opinion. You should judge such testimony like any other
14 testimony. You may accept it or reject it and give it as
15 much weight as you think it deserves, considering the
16 witness's education and experience, the soundness of the
17 reasons given for the opinion, and all other evidence in
18 this case.

19 You will note that the indictment charges that the
20 offenses were committed on or about a specified date. The
21 government does not have to prove that the crimes were
22 committed on that exact date. So long as the government
23 proves beyond a reasonable doubt that the defendant
24 committed the crime on a date reasonably near January 1,
25 2011, through December 29, 2015, the dates stated in the

1 indictment.

2 You are here to decide whether the government has
3 proved, beyond a reasonable doubt, that each individual
4 defendant is guilty of the crimes charged in the indictment.
5 No defendant is on trial for any act, conduct, or offense
6 not alleged in the indictment, neither are you called upon
7 to return a verdict as to the guilt of any other person or
8 persons not on trial as a defendant in this case except as
9 you are otherwise instructed.

10 If a defendant is found guilty, it will be my duty
11 to decide what the punishment will be. You should not be
12 concerned with punishment in any way. It should not enter
13 your consideration or discussion.

14 A separate crime is charged against one or more of
15 the defendants in each count of the indictment. Each count,
16 and the evidence pertaining to it, should be considered
17 separately. The case of each defendant should be considered
18 separately and individually.

19 The fact that you may find one or more of the
20 accused guilty or not guilty of any of the crimes charged
21 should not control your verdict as to any other crime or any
22 other defendant. You must give separate consideration to
23 the evidence as to each defendant.

24 As used in these instructions, a representation is
25 material if it has a natural tendency to influence or is

1 capable of influencing the decision of the person or entity
2 to which it is addressed.

3 The government can prove materiality in either of
4 two ways: First, a representation is material if a
5 reasonable person would attach importance to its existence
6 or nonexistence in determining his or her choice of action
7 in the transaction in question.

8 Second, a statement could be material, even though
9 only an unreasonable person would rely on it, if the person
10 who made the statement knew or had reason to know his or her
11 victim was likely to rely on it.

12 In determining materiality, you should consider
13 that naivety, carelessness, negligence, or stupidity of a
14 victim. You should consider that naivety, carelessness,
15 negligence, or stupidity of a victim does not excuse
16 criminal conduct, if any, on the part of the defendant.

17 The word "knowingly" means that the act was done
18 voluntarily and intentionally not because of a mistake or an
19 accident.

20 Interstate commerce means commerce or travel
21 between one state, territory, or possession of the United
22 States in another state, territory, or possession of the
23 United States, including the District of Columbia.

24 Summary charts prepared or relied upon by a
25 witness have been received into evidence for the purpose of

1 explaining facts disclosed by testimony and exhibits which
2 are also in evidence in this case.

3 If you find that such summary chart correctly
4 reflects the other evidence in the case, you may rely upon
5 them.

6 And to the extent that you find that they are not
7 in truth summaries of the evidence in the case, you are to
8 disregard them. The best evidence of what occurred are the
9 underlying records themselves.

10 Count I: Conspiracy to commit wire fraud
11 affecting a financial institution. The defendants are
12 charged in Count I of the indictment, conspiracy to commit
13 the offense of wire fraud affecting a financial institution
14 in violation of Title 18, United States Code, Section 1349
15 and Section 1343.

16 Title 18, United States Code, Section 1349, makes
17 it a crime for two or more persons to conspire or commit the
18 offense of wire fraud.

19 The elements of the crime of wire fraud affecting
20 a financial institution under Title 18, United States Code,
21 Section 1343, are explained below. You are directed to read
22 those instructions on wire fraud before reaching a decision
23 on Count I.

24 A conspiracy is an agreement between two or more
25 persons to join together to accomplish some unlawful

1 purpose. It is a kind of partnership in crime in which each
2 member of the conspiracy becomes the agent of every other
3 member.

4 For you to find the defendant guilty of this
5 crime, you must be convinced that the government has proved
6 each of the following beyond a reasonable doubt.

7 First, that the defendant and at least one other
8 person, agreed to commit the crime of wire fraud, as charged
9 in the indictment.

10 Second, that the defendant knew the unlawful
11 purpose of the agreement.

12 Third, that the defendant joined in it willfully,
13 that is, with the intent to further the unlawful purpose.

14 One may become a member of a conspiracy without
15 knowing all the details of the unlawful scheme or the
16 identities of all the other alleged conspirators.

17 If a defendant understands the unlawful nature of
18 a plan or scheme and knowingly and intentionally joins in
19 that plan or scheme on one occasion, that is sufficient to
20 convict him or her for conspiracy, even though the defendant
21 had not participated before, and even though the defendant
22 played only a minor part.

23 The government does not need to prove that the
24 alleged conspirators entered into any formal agreement or
25 that they directly stated between themselves all the details

1 of the scheme. Likewise, the government does not need to
2 prove that all of the details of the scheme alleged in the
3 indictment were actually agreed upon or carried out.

4 Nor must it prove that all of the persons alleged
5 to have been members of the conspiracy were such or that the
6 alleged conspirators actually succeeded in accomplishing
7 their unlawful objectives.

8 The mere presence at the scene of an event, even
9 with knowledge that a crime is being committed, or the mere
10 fact that certain persons may have associated with each
11 other and may have assembled and discussed common aims and
12 interests does not necessarily establish proof of the
13 existence of a conspiracy.

14 Also, a person who has no knowledge of a
15 conspiracy but who happens to act in a way which advances
16 some purpose of a conspiracy does not thereby become a
17 conspirator.

18 Wire Fraud. Title 18, United States Code,
19 Section 1343, makes it a crime for anyone to use interstate
20 wire communication in carrying out a scheme to defraud.

21 For you to find the defendant guilty of this
22 crime, you must be convinced that the government has proved
23 each of the following beyond a reasonable doubt:

24 First, that the defendant knowingly devised or
25 intended to devise a scheme to defraud the investing public

1 or shareholders of UDF III, UDF IV, and UDF V.

2 Second, that the scheme to defraud employed false
3 material representations.

4 Third, that the defendant transmitted or caused to
5 be transmitted, by way of wire communications in interstate
6 commerce, any writing for the purpose of executing such
7 scheme.

8 And fourth, that the defendant acted with a
9 specific intent to defraud.

10 Additionally, if you find the government has
11 proven the preceding four elements beyond a reasonable
12 doubt, you should consider whether the government has also
13 proven the following element beyond a reasonable doubt.

14 Fifth, that the scheme to defraud affected a
15 financial institution.

16 Although the indictment may charge the defendants
17 with committing an offense in several ways by using the word
18 "and," it is not necessary for the government to prove that
19 the defendants did each of the things named in the
20 indictment.

21 It is sufficient if the government proves beyond a
22 reasonable doubt that the defendant did one of the
23 alternative acts as charged; however, you must unanimously
24 agree on which of the act the defendant committed.

25 A scheme to defraud means any plan, pattern, or

1 course of action intended to deprive another of money or
2 property or bring about some financial gain to the person
3 engaged in the scheme.

4 A specific intent to defraud means a conscious,
5 knowing intent to deceive or cheat someone. A
6 representation is false if it is known to be untrue or is
7 made with reckless indifference as to its truth or falsity.

8 A representation would also be false if it
9 constitutes a half truth or effectively omits or conceals a
10 material fact, provided it is made with the intent to
11 defraud.

12 A representation is material if it has a natural
13 tendency to influence or is capable of influencing the
14 decision of the person or entity to which it is addressed.

15 The word "willfully," as that term has been used
16 from time to time in these instructions, means that the act
17 was committed voluntarily and purposely, with the specific
18 intent to do something the law forbids; that is to say, with
19 bad purpose either to disobey or disregard the law.

20 It connotes a higher degree of criminal spent than
21 knowingly. Knowingly requires proof of knowledge of facts
22 that constitute the offense. Willfully requires proof that
23 a defendant acted with knowledge that his conduct violated
24 the law.

25 It is not necessary that the government prove all

1 of the details alleged in the indictment concerning the
2 precise nature and purpose of the scheme. What must be
3 proved beyond a reasonable doubt is that the defendant
4 knowingly devised or intended to devise a scheme to defraud
5 by means of false or fraudulent pretenses, representations,
6 or promises that was substantially the same as the one
7 alleged in the indictment.

8 It is also not necessary that the government prove
9 that the material transmitted by wire communications was
10 itself false or fraudulent, or that the use of the
11 interstate wire communications facilities was intended as
12 the specific or exclusive means of accomplishing the alleged
13 fraud.

14 What must be proved beyond a reasonable doubt is
15 the use of the interstate wire communication facilities was
16 closely related to the scheme because the defendant either
17 wired something or caused it to be wired in interstate
18 commerce in an attempt to execute or carry out the scheme.

19 The alleged scheme need not actually succeed in
20 defrauding anyone.

21 To cause interstate wire communications facilities
22 to be used is to do an act with knowledge that the use of
23 the wire communications facilities will follow in the
24 ordinary course of business or where such use can reasonably
25 be foreseen.

1 "Financial institution" means a depository
2 institution insured by the Federal Deposit Insurance
3 Corporation.

4 A scheme to defraud affects a financial
5 institution if it exposes the financial institution to a new
6 or increased risk of loss. A financial institution need not
7 have actually suffered a loss in order to have been affected
8 by the scheme. The mere utilization of a financial
9 institution in the transfer of funds does not affect a
10 financial institution.

11 In determining whether or not a defendant acted
12 with criminal intent to defraud or deceive, you may consider
13 whether or not the defendant had a good faith belief that
14 what he or she was doing was legal.

15 If you have a reasonable doubt as to whether or
16 not the defendant had a good faith belief that what he or
17 she was doing was legal, you must acquit the defendant and
18 say by your verdict of not guilty.

19 Count II: Conspiracy to commit securities fraud.
20 The defendants are charged in Count II of the indictment
21 with conspiracy to commit the offense of securities fraud in
22 violation of Title 18, United States Code, Section 1349 and
23 Section 1348.

24 Title 18, United States Code, Section 1349, makes
25 it a crime for two or more persons to conspire to commit the

1 offense of securities fraud.

2 The elements of the crime of securities under
3 Title 18, United States Code, Section 1348, are explained to
4 you below. You are directed to read those instructions on
5 securities fraud before reaching a decision as to Count II.

6 A conspiracy is an agreement between two or more
7 persons to join together to accomplish some unlawful
8 purpose. It is a kind of partnership in crime in which each
9 member of the conspiracy becomes the agent of every other
10 member.

11 For you to find the defendant guilty of this
12 crime, or to find a defendant guilty of this crime, you must
13 be convinced that the government has proposed each of the
14 following beyond a reasonable doubt.

15 That the defendant, and at least one other person,
16 agreed to commit the crime of securities fraud as charged in
17 the indictment. That the defendant knew the unlawful
18 purpose of the agreement. That the defendant joined in it
19 willfully, that is, with the intent to further the unlawful
20 purpose.

21 One may become a member of a conspiracy without
22 knowing all the details of the unlawful scheme or the
23 identities of all the other alleged conspirators.

24 If a defendant understands the unlawful nature of
25 a plan or scheme and knowingly and intentionally joins in

1 that plan or scheme on one occasion, that is sufficient to
2 convict him or her for conspiracy, even though the defendant
3 had not participated before, and even though the defendant
4 played only a minor part.

5 The government does not need to prove that the
6 alleged conspirators entered into any formal agreement or
7 that they directly stated between themselves all the details
8 of the scheme.

9 Likewise, the government does not need proof that
10 all of the details of the scheme alleged in the indictment
11 were actually agreed upon and carried out. Nor must it
12 prove that all the persons alleged to have been members of
13 the conspiracy were such, or that the alleged conspirators
14 actually succeeded in accomplishing their unlawful
15 objectives.

16 The mere presence at the scene of an event, even
17 with knowledge that a crime is being committed, or the mere
18 fact that certain persons may have been associated with each
19 other and may have assembled together and discussed common
20 aims and interests, does not necessarily establish proof of
21 the existence of a conspiracy.

22 Also, a person who has no knowledge of a
23 conspiracy but who happens to act in a way which advances
24 some purpose, does not thereby become a conspirator.

25 As I have told you, whether your verdict is guilty

1 or not guilty, it must be unanimous.

2 Count II of the indictment accuses the defendants
3 of committing the crime or conspiracy to commit securities
4 fraud by entering into an agreement to knowingly accomplish
5 two unlawful objectives.

6 The first is to enter into an agreement to
7 knowingly accomplish a scheme to defraud a person in
8 connection with UDF III, UDF IV, UDF V securities.

9 The second is to enter into an agreement to
10 knowingly accomplish a scheme to obtain by means of
11 materially false and fraudulent pretenses, representations,
12 and promises, any money and property in connection with
13 purchase or sale of securities.

14 The government need not prove that the alleged
15 conspirators entered into any agreement to knowingly
16 accomplish both unlawful objectives for you to return a
17 guilty verdict on this charge.

18 Proof beyond a reasonable doubt that the alleged
19 conspirators entered into an agreement to knowingly
20 accomplish at least one of the unlawful objectives charged
21 in Count II is enough.

22 But in order to return a guilty verdict, all of
23 you must agree that the same unlawful objective was agreed
24 upon by the alleged conspirators.

25 All of you must agree that the government proved

1 beyond a reasonable doubt that the defendant agreed to enter
2 into a scheme to defraud or all of you must agree that the
3 government proved beyond a reasonable doubt that the
4 defendant agreed to enter into a scheme to obtain money or
5 property or all of you must agree that the government proved
6 beyond a reasonable doubt that the defendant committed both
7 acts.

8 I will now lay out the substantive elements for
9 securities fraud. Counts III through X charge the
10 defendants with knowingly executing or attempting to execute
11 a scheme to defraud holders of securities or aiding and
12 abetting this offense, in violation of Title 18, United
13 States Code, Section 2(a).

14 The crime of committing or attempting to commit
15 securities fraud can be shown in either of the following two
16 ways: One, Title 18, United States Code, Section 1348(1)
17 makes it a federal crime or offense for anyone to knowingly
18 execute or attempt to execute a scheme or artifice to
19 defraud any person in connection with any security of an
20 issuer of a class of securities registered under the
21 Securities Exchange Act of 1934 or of an issuer that is
22 required to file reports under that act.

23 Or two, Title 18, United States Code, Section
24 1348(2) makes it a federal crime for anyone to knowingly
25 execute or attempt to execute a scheme or artifice of fraud

1 by means of false or fraudulent pretenses, representations,
2 or promises any money or property in connection with the
3 purchase or sale of any commodity for future delivery or any
4 option on a commodity for future delivery or any security of
5 an issuer with a class of securities registered under the
6 Securities Exchange Act of 1934 or that is required to file
7 reports under that act.

8 I will now discuss the two alternative ways of
9 committing or attempting to commit securities fraud.

10 Section 1348(1), the defendants can be found
11 guilty of securities fraud, in violation of Title 18, United
12 States Code, Section 1348(1) only if each of the following
13 three elements is proven beyond a reasonable doubt:

14 First, that the defendants knowingly executed or
15 attempted to execute a scheme or artifice to defraud a
16 person in connection with UDF III or UDF V securities as
17 identified in the respective count of the indictment.

18 Second, that the defendants did so with the intent
19 to defraud.

20 And third, that UDF III or UDF V, as identified in
21 the respective count of the indictment, was an issuer that
22 registered its securities under Section 12 of the Securities
23 Exchange Act of 1934, or was otherwise required to file
24 reports under Section 15(d) of the Securities Exchange Act
25 of 1934.

1 Section 1348(2). The defendants can be found
2 guilty of securities fraud in violation of Title 18, United
3 States Code, Section 1348(2), only if each of the following
4 four elements is proven beyond a reasonable doubt:

5 First, that the defendants knowingly executed or
6 attempted to execute a scheme or artifice to obtain money or
7 property by means of materially false or fraudulent
8 pretenses, representations, or promises.

9 Second, that the defendants executed or attempted
10 to execute their scheme in connection with the purchase or
11 sale of UDF III or UDF V securities as identified in the
12 respective count of the indictment.

13 Third, that the defendants acted with an intent to
14 defraud.

15 And fourth, that UDF III or UDF V., as identified
16 in the respective count of the indictment, was an issuer
17 that registered its securities under Section 12 of the
18 Securities Exchange Act of 1934 or was otherwise required to
19 file reports under Section 15(d) of the Securities Act of
20 1934.

21 To find the defendants guilty of committing or
22 attempting to commit securities fraud, you need find only
23 that the government proved beyond a reasonable doubt each
24 element of either Section 1348(1) or Section 1248(2).

25 As previously explained, although the indictment

1 may charge the defendants with committing an offense in
2 several ways by using the word "and," it is not necessary
3 for the government to prove the defendants did each of the
4 things named in the indictment.

5 It is sufficient the government proves beyond a
6 reasonable doubt that a defendant did one of the alternative
7 acts as charged; however, you must unanimously agree on
8 which act the defendant committed.

9 The following definitions may help you in your
10 deliberations. The term "security" means any note, stock,
11 treasury stock, bond, debenture, certificate of interest, or
12 participation in any profit sharing agreement or, in
13 general, any instrument commonly known as a security or any
14 certificate of interest or participation in temporary or
15 interim certificate for, receipt for, or warrant, or right
16 to subscribe to or purchase any of the foregoing.

17 The phrase "in connection with any security,"
18 means that the scheme and artifice to defraud described in
19 the indictment must have had some relationship to or have
20 been connected to a security.

21 The term "in connection with the purchase or sale
22 of any security" means that the alleged fraudulent conduct
23 occurred in some phase of a transaction involving the
24 purchase or sale of a security.

25 The government need not show, however, that the

1 defendant or anyone associated with him or her bought or
2 sold any such securities.

3 A "scheme to defraud" means any plan, pattern, or
4 course of action intended to deprive another of money or
5 property or bring about some financial gain to the person
6 engaged in the scheme.

7 An "intent to defraud" means a conscious, knowing
8 intent to deceive or cheat someone. A representation is
9 false if it is known to be untrue or is made with reckless
10 indifference as to its truth or falsity.

11 A representation would be false if it constitutes
12 a half truth or effectively omits or conceals a material
13 fact, provided it is made with the intent to defraud.

14 A representation is material if it has a natural
15 tendency to influence or is capable of influencing the
16 decision of the person or entity to which it is addressed.

17 The term "affiliate" means a person that directly
18 or indirectly, through one or more intermediaries, controls
19 or is controlled by or is under common control with the
20 issuer.

21 The word "control" means the possession, direct or
22 indirect, of the power to direct or cause the direction of
23 management and policies of a person, whether through
24 ownership of voting securities, by contract, or otherwise.

25 The guilt of a defendant in a criminal case may be

1 established without proof that the defendant personally did
2 every act constituting the offense alleged.

3 The law recognizes that, ordinarily, anything a
4 person can do for himself may also be accomplished by him
5 through the direction of another person as his or her agent
6 or by in concert with, or under the direction of another
7 person or persons in a joint effort or enterprise.

8 If another person is acting under the direction of
9 the defendant or if the defendant joins another person and
10 performs acts with the intent to commit a crime, then the
11 law holds the defendant responsible for the acts and conduct
12 of such other persons just as though the defendant had
13 committed the acts or engaged in such conduct.

14 Before any defendant may be held criminally
15 responsible for the acts of others, it is necessary that the
16 accused deliberately associate himself in some way with the
17 crime and participate in it with the intent to bring about
18 the crime.

19 Mere presence at the scene of a crime and
20 knowledge that a crime is being committed are not sufficient
21 to establish that a defendant either directed or aided and
22 abetted the crime, unless you find beyond a reasonable doubt
23 that the defendant was a participant and not merely a
24 knowing spectator.

25 In other words, you may not find any defendant

1 guilty unless you find beyond a reasonable doubt that every
2 element of the offense, as defined in these instructions was
3 committed by some person or persons, and that the defendant
4 voluntarily participated in its commission with the intent
5 to violate the law.

6 For you to find a defendant guilty of this crime,
7 you must be convinced that the government has proved each of
8 the following beyond a reasonable doubt:

9 First, that the offense of securities fraud, as
10 charged in Counts III through X of the indictment, was
11 committed by some person.

12 Second, that the defendant associated with the
13 criminal venture.

14 Third, that the defendant purposefully
15 participated in the criminal venture.

16 And fourth, that the defendant sought by action to
17 make the venture successful.

18 "To associate with the criminal venture," means
19 that the defendant shared the criminal intent of the
20 principal. This element cannot be established if the
21 defendant had no knowledge of the principal's criminal
22 venture.

23 "To participate in the criminal venture means the
24 defendant engaged in some affirmative conduct designed to
25 aid the venture or to assist the principal of the crime.

1 A conspirator is responsible for offenses
2 committed by another conspirator if the conspirator was a
3 member of the conspiracy when the offense was committed and
4 if the offense was committed in furtherance of and as a
5 foreseeable consequence of the conspiracy.

6 Therefore, if you have first found the defendant
7 guilty of either the conspiracy charged in Counts I or II,
8 and if you find beyond a reasonable doubt that during the
9 time the defendant was a member of that conspiracy, another
10 conspirator committed the offenses in Count III through X,
11 both in furtherance of and as a foreseeable consequence of
12 that conspiracy, then you may find the defendant guilty of
13 the offenses charged in Counts III through X, even though
14 the defendant may not have participated in any of the acts
15 which constitute the offense described in Counts III through
16 X.

17 To reach a verdict, whether guilty or not guilty,
18 all of you must agree. Your verdict must be unanimous as to
19 each count of the indictment.

20 Your deliberations will be secret. You will never
21 have to explain your verdict to anyone. It is your duty to
22 consult with one another and to deliberate in an effort to
23 reach an agreement, if you can do so.

24 Each of you must decide the case for yourselves,
25 but only after an impartial consideration of the evidence

1 with your fellow jurors.

2 Do not let any bias, sympathy, or prejudice that
3 you may feel toward one side or the other influence your
4 decision in any way.

5 In particular, do not let racial, ethnic, national
6 origin, or other bias influence your decision in any way.

7 During your deliberations, do not hesitate to
8 reexamine your own opinions and change your mind if
9 convinced that you were wrong.

10 But do not give up your honest beliefs as to the
11 weight or effect of the evidence solely because of the
12 opinion of your fellow jurors or for the mere purpose of
13 returning a verdict.

14 Remember, at all times, you are judges, judges of
15 the facts. Your duty is to decide whether the government
16 has proved each defendant individually guilty beyond a
17 reasonable doubt.

18 When you go to the jury room, the first thing that
19 you should do is select one of your number as your
20 foreperson who will help guide your deliberation and speak
21 for you here in the courtroom.

22 A verdict form has been prepared for your
23 convenience. The foreperson will write the unanimous answer
24 of the jury in the space provided for each count of the
25 indictment, either guilty or not guilty.

1 At the conclusion of your deliberations, the
2 foreperson should date and sign the verdict. If you need to
3 communicate with me during your deliberations, your
4 foreperson should write the message and give it to our court
5 security officer. I will either reply in writing or bring
6 you into the courtroom and answer your message.

7 Bear in mind that you are not to reveal to any
8 person, not even to me, how the jury stands numerically or
9 otherwise on any count of the indictment until after you
10 have reached a unanimous verdict, and I will sign this form.

11 Then the balance of the charge is the verdict
12 forms. And they're self-explanatory, and they go through
13 each count of the indictment, Counts I through X, and you
14 will see, and I will just read this first one for you here.

15 Count I: We, the jury, find the defendant, Hollis
16 Morrison Greenlaw, "blank" as to Count I of the indictment.
17 You will answer either not guilty or guilty.

18 The second question: We, the jury, find the
19 defendant, Benjamin Lee Wissink, "blank" as to Count I of
20 the indictment. You will answer not guilty or guilty.

21 The next question is: We, the jury, find the
22 defendant, Cara Delin Obert, "blank" as to Count I of the
23 indictment. You will answer not guilty or guilty.

24 And the next question asks: We, the jury, find
25 the defendant, Jeffrey Brandon Jester, "blank" as to Count I

1 of the indictment. Answer not guilty or guilty.

2 And then there's a follow-up question that asks:
3 If you find the defendants guilty of Count I, did you
4 find -- and it really should say, if you find "any" of the
5 defendants -- if you find any of the defendants guilty of
6 Count I, did you find that the scheme to defraud affected a
7 financial institution? And you will answer yes or no in the
8 space that is provided for you.

9 And then the same process applies to Count II.
10 You answer the same questions as related to Count No. II.
11 Count No. III. Count No. IV. Count No. V. Count No. VI.
12 Count No. VII. Count No. VIII. Count No. VIIII. And Count
13 No. X.

14 And on that form at the very bottom, you'll see,
15 or your presiding juror will see, there's a space for your
16 presiding juror to sign and a space for him to date the jury
17 charge. Okay.

18 All right. Well, that took a little longer than I
19 thought it would, so we're running a little late, but we
20 will get started.

21 Ms. Eggers.

22 MS. EGGERS: Thank you. May it please the Court,
23 Counsel.

24 THE COURT: Yes.

25 MS. EGGERS: Ladies and gentlemen, one of the

1 first instructions Judge O'Connor gave you a few minutes ago
2 on page 2 was something that we talked about last Wednesday.
3 And that is, that a jury may never be allowed to consider
4 bias, prejudice, or sympathy.

5 Y'all might remember last Wednesday we talked
6 about Lady Justice and she has the blindfold on. Each
7 closing argument I give, I always bring this instruction up,
8 because I've heard, after the fact, a lot of times people
9 say, "Well, you know what, government, you proved beyond all
10 reasonable doubt, but we felt sorry for someone," or "We
11 felt sympathetic for someone."

12 This instruction is in there. And actually, Judge
13 O'Connor actually talked about it twice. So I ask that,
14 when y'all go back behind that door and you start
15 deliberating, if at any time somebody says, "Yeah, you know
16 what, the government proved it beyond a reasonable doubt,
17 but I feel sorry for somebody," that one of you raise your
18 hand, and say, "Wait a second. Judge O'Connor gave us this
19 instruction right here on page 2. We can't do that."

20 The same thing, another instruction Judge O'Connor
21 gave you, and it was brought up last Wednesday as well, is
22 that a jury in federal court is never permitted to consider
23 punishment, the question of punishment. That instruction is
24 in there and Judge O'Connor instructed you on it.

25 And for the same thing I ask that, when you go

1 behind that door and you start deliberating, if at any point
2 somebody says, "You know what, each of those elements were
3 proven beyond a reasonable doubt, but I don't want to see
4 somebody get in trouble. I don't want to see somebody get
5 punished." I ask that you raise your hand and say, "Wait a
6 second. Judge O'Connor said we can't do that. We can't
7 consider punishment."

8 Now, Judge O'Connor, he is the one that gives you
9 the law, and he went through all the various elements and
10 you will have the jury instructions. Count I, again, is
11 conspiracy to commit wire fraud affecting a financial
12 institution.

13 In conspiracy, you will see Count II is conspiracy
14 as well. So Counts I and II, they actually, for the
15 conspiracy aspects of it, they have generally the same
16 elements. There's three elements: That the defendant, and
17 at least one other person, agreed to commit the crime, for
18 Count I, it's wire fraud; two, that the defendant knew the
19 unlawful purpose of the agreement; and three, that the
20 defendant willfully joined in it, that is, with the unlawful
21 purpose to further the unlawful purpose of the scheme.

22 So as Judge O'Connor explained, if somebody is
23 charged with conspiracy -- well, since they're charged with
24 conspiracy to commit wire fraud, you need to know the
25 elements of what wire fraud are.

1 Before we get to that, though, with regards to
2 conspiracy, I hope nobody thought it was going to be like
3 TV, that there was going to be some email that was going to
4 be flashed upon the screen that was going to say, "We've got
5 this unlawful agreement, we're going to do this crime."
6 That's not how this works.

7 Under conspiracy law, one may become a member of a
8 conspiracy without knowing all the details of the unlawful
9 scheme. If the defendant understands the unlawful nature of
10 the plan or scheme and intentionally joins in on it in one
11 occasion, that is enough for conspiracy.

12 I gave that crazy example of Ms. Jones,
13 Miss Lyons, and I getting involved in a conspiracy to rob a
14 bank. That's a conspiracy. What y'all see here is a
15 conspiracy.

16 The government does not need to prove any formal
17 agreement. Again, I hope you didn't expect that there was
18 going to be some email, where it says, "Yes, let's go commit
19 securities fraud tomorrow." That's just not how this works.

20 The government does not need to prove that all the
21 details were actually agreed upon or carried out when
22 charged with conspiracy. The government does not have to
23 prove that all the persons alleged in the conspiracy are
24 actually members, but we did.

25 Each of these four defendants, you heard evidence

1 concerning each of them. And further, the government does
2 not have to prove that the alleged conspirators actually
3 succeeded, but we did.

4 Remember that hypothetical with me robbing the
5 bank, going inside and somebody catching me right as I came
6 out? We reached that agreement on the front end. Even if I
7 got caught coming out the door, we reached that agreement.

8 So the elements -- what is wire fraud? To know
9 whether or not somebody -- whether or not we've met the
10 elements of conspiracy, we've got to figure out what wire
11 fraud is. That the defendants knowingly devised or intended
12 to devise a scheme to defraud the investing public or
13 shareholders of UDF III, IV, or V.

14 Now, the evidence has shown that starting, at
15 least as early as January 2011, these defendants realized
16 there was not enough money coming in. They realized, and
17 you were able to see it in that big chart, 410, they
18 realized that in order to keep those distributions going,
19 that, they were going have to pull the money from somewhere
20 else. We know it started at least as early as January of
21 2011.

22 Why? Why did they do it? Because they didn't
23 have to. It was made very clear that there was no promise
24 to pay distributions. They were not required to pay
25 distributions. But they all knew good and well that, if

1 they didn't pay money to those earlier investors, you
2 wouldn't get subsequent investors.

3 Number two, that the scheme to defraud employed
4 false material misrepresentations. The defendants did not
5 tell UDF III investors there wasn't enough cash from
6 operations to pay the distributions. The defendants did not
7 tell UDF IV's would-be investors that their money was going
8 to be used to issue loans so distributions could be paid to
9 earlier investors in III.

10 The defendants did not tell UDF III's investors
11 that there was not enough money to even pay its own Legacy
12 Texas Bank loan. The defendants told UDF Vs would-be
13 investors that it would not engage in affiliate
14 transactions.

15 The defendants did not tell UDF V's would-be
16 investors that their money was going to be used to issue
17 loans so that distributions could be paid to those earlier
18 investors. That's nowhere in those SEC files.

19 Number three, for wire fraud, that the defendant
20 transmitted or caused to be transmitted by wire, interstate
21 commerce, any writing for the purpose of executing this
22 scheme.

23 And y'all are probably wondering why we had poor
24 Ms. Tidwell come all the way in here and talk about her
25 uploading SEC documents to a company in New York City.

1 Well, for wire fraud, there actually has to be an interstate
2 transmission of some sort.

3 You heard the number of ways. You heard
4 Mr. Vlasak, there are wires that were from DST that included
5 investors' money. The wires that were to DST that included
6 investors' money. Wires from financial institutions. All
7 the emails at UDF. Emails which are wires to the company in
8 New York that she helped upload and do the web browsing, and
9 then uploading the SEC files themselves. That has been
10 shown beyond all doubt.

11 Fourth element of wire fraud, that the defendant
12 acted with the specific intent to defraud. They did not
13 tell anyone in those SEC filings the true reason for the
14 advance requests, participations, and refinance that UDF IV
15 was doing with UDF III.

16 Had they disclosed the real reason all those
17 participation, advance requests, and refinances were being
18 done, what person would want to put their money in UDF IV?

19 They did not tell anyone in the SEC filings that
20 UDF III did not have enough money to pay its own
21 1.25 million quarterly payment.

22 They did not tell anyone in the SEC about that
23 pitch, that pitch that Blake Buffington and Tom Buffington
24 and James Dorney were given.

25 The defendants went out of their way, when they

1 created UDF V., they went out of their way to make it as
2 though that one was going to be different.

3 The March 2014 manipulated spreadsheet that
4 auditors were informed was based upon executed contracts.
5 There was a lot going on back and forth in here about
6 whether or not it had to have a contract, whether or not it
7 didn't.

8 But Government's Exhibit 96 shows you what the
9 auditors were led to believe back in March of 2014, that
10 those were based on executed contracts.

11 The June 2014 manipulated spreadsheet being given
12 to this third-party company, Navigant. Look at that email.
13 Navigant is a third-party company. They're still continuing
14 to send this manipulated spreadsheet.

15 They cannot tell the board of directors for UDF V.
16 You heard Mr. Kahane. The uncontroverted evidence is that
17 Mr. Kahane said he did not know about all these illegal
18 transactions.

19 What is wire fraud? Affecting a financial
20 institution. As Judge O'Connor explained, after you go
21 through the elements of wired fraud, one of the questions
22 that's going to be on the verdict form -- or conspiracy to
23 commit wire fraud is whether or not the scheme affected a
24 financial institution.

25 You heard that Veritex Bank, Capital Bank, Legacy

1 Texas Bank, all of those banks relied on the SEC filings,
2 all of them.

3 You heard about them trying to add to the UDF V
4 borrowing base at Prosperity Bank. There's the exhibit for
5 that.

6 You heard about the late payments to Legacy Texas
7 Bank. You saw those exhibits and the summary exhibits. You
8 saw the late payments to Prosperity Bank. You saw the late
9 payments to Independent Bank.

10 All of that evidence is before you and that's why
11 the defendants are guilty of Count I, conspiracy to commit
12 wire fraud affecting a financial institution.

13 Judge O'Connor went through a number of
14 definitions. And these definition, some of them apply to
15 both Count I and the remainder of the counts as well. He
16 read them twice to make sure that you see those definitions
17 apply.

18 But a scheme to defraud means a plan, pattern, or
19 course of action intended to deprive another of money or
20 property and intended to bring about some financial gain to
21 the person engaged in the scheme.

22 Now, Judge O'Connor is very clear, you heard the
23 testimony about the amount of money these defendants
24 received for their involvement with UDF. The only reason
25 that you're to consider that is for motive. Defendant

1 Greenlaw had significant motive.

2 A specific intent to defraud means a conscious,
3 knowing intent to deceive or cheat someone.

4 Other definitions that are included in there is
5 what exactly is "false"? It seems crazy, but only lawyers
6 actually right down what a definition "false" is, but here
7 it is so we know all know.

8 A representation would be false if it constitutes
9 a half truth or effectively omits or conceals a material
10 fact provided it is made with the intent to defraud.

11 A reputation is material if it has a natural
12 tendency to or is capable of influencing the decision-maker.

13 For Counts I and II, the conspiracy counts,
14 there's also a definition of "willfully" involved in there.
15 Counts III through V do not include the word "willfully,"
16 but Counts I and II do.

17 The definition of "willfully" provides that the
18 act was committed voluntarily and purposely with the
19 specific intent to do something the law forbids, that is
20 with bad purpose either to disobey or disregard the law.

21 Now, for the wire fraud aspect of it. It's not
22 actually required for the government to prove that something
23 false was in the wire communication. That is not required.

24 The government does not have to prove, as I
25 mentioned before, that the scheme actually succeeded.

1 Now, with regards to that, determining whether or
2 not it affected a financial institution. Quite a bit was
3 made that the banks were ultimately repaid. No doubt about
4 it. They were. That is not required.

5 All that is required to prove a conspiracy to
6 commit wire fraud affecting a financial institution is that
7 it exposes the financial institution to a new or increased
8 risk of loss. We did not have to show that they lost one
9 dollar.

10 All we had to show was that it exposed the
11 financial institution to a new or increased risk of loss.

12 The financial institution need not have actually
13 suffered a loss at all. That's Count I, ladies and
14 gentlemen, and the defendants are guilty of Count I.

15 Count II, conspiracy to commit securities fraud.
16 You'll notice that the same elements apply to conspiracy
17 commit securities fraud.

18 And then once you get to that, just like with the
19 conspiracy to commit wire fraud, you can see one of those
20 elements of securities fraud to know whether or not they
21 actually engaged in conspiracy.

22 As Judge O'Connor explained, there are two ways
23 for a person to be guilty of securities fraud. The first
24 way is under paragraph 1, and I've highlighted and put in
25 yellow the part that sort of -- the significant part of it.

1 But it's to knowingly execute or attempt to
2 execute a scheme or artifice to defraud any person in
3 connection with any security.

4 The second way is to knowingly execute or attempt
5 to execute a scheme or artifice -- and I, again, underlined
6 and made it yellow -- to obtain by means of false or
7 fraudulent pretenses, representations, or promises, any
8 money or property in connection with the sale or purchase.

9 Two different ways. We only have to prove one,
10 and y'all do need to agree upon whichever way, or both, that
11 we've proven it. I would submit that we've proven it both
12 ways.

13 The elements for securities fraud. Just like wire
14 fraud, there's -- I like to call it like a recipe. If you
15 don't have everything that goes into the cake, that cake is
16 not going to rise. So we have to prove each of these
17 elements beyond a reasonable doubt for securities fraud
18 under subparagraph 1.

19 That the defendants knowingly executed or
20 attempted to execute an artifice to defraud a person in
21 connection with UDF III or IV securities as shown in each
22 count.

23 You'll see that each count of the substantive
24 counts concerns an SEC filing for various years, either a
25 10-K or a 10-Q.

1 Number two that the defendant so with the intent
2 to defraud. And number three, that the securities were
3 registered.

4 I don't think there's going to be any dispute here
5 that these securities were registered. So I don't think
6 that's where the dispute's going to be.

7 Elements for subparagraph two. Again, that the
8 defendants knowingly executed or attempted to execute or
9 obtained money or property by means of material, false
10 pretenses, representations, or promises. That they did it
11 in connection with the security, either III or V, as there
12 in the indictment. That the defendants did so with the
13 intent to defraud. And that, again, the securities were
14 registered.

15 So when you break those down, between
16 subparagraph one and subparagraph two of securities fraud,
17 it's basically whether or not we proved that they engaged in
18 a scheme or artifice to defraud in connection -- or to
19 defraud a person in connection with UDF III or V. Or, under
20 subparagraph two, that they engaged in a scheme or artifice
21 to obtain money or property.

22 So what do we have? What's our evidence for this?

23 We have, again, those same things I pointed out
24 earlier. They did not tell anyone in the SEC filings the
25 true reason for the advance request participations. They

1 didn't tell anyone in the SEC filings they didn't have
2 enough money to make their own loan payments. All those
3 things I pointed out earlier.

4 They went out of their way to tell the investing
5 public, V is going to be different. They made that
6 decision. Nothing required them to do that, but y'all heard
7 why they did. They did because they needed to open it up to
8 other groups like Cetera.

9 Some definitions. Again, there's a number of
10 definitions that is used in this part of the charge as well.
11 So I'm not going to re-go over those, but you heard Judge
12 O'Connor read some of them. And that was the definition of
13 an "affiliate."

14 I expect there's going to be argument by defense
15 counsel saying this is sort of a mushy kind of thing, people
16 have different opinions. You read the definition that
17 Judge O'Connor gives you.

18 The term "affiliate" means a person that, directly
19 or indirectly, through one or more intermediaries, controls
20 or is controlled by, or is under common control with the
21 issuer.

22 The word "control" means the possession, direct or
23 indirect, of the power to direct or cause the direction of
24 management and policies of a person, whether through
25 ownership of voting securities -- and then I underlined "by

1 contract."

2 They had it written into the contracts that they
3 made the decision. They could decide what loans to draw on.
4 They made that decision. And by doing that, they made
5 themselves affiliates with Centurion and Buffington.

6 Now, each of the counts, as I mentioned -- and
7 you'll see there's a -- the substantive counts, you'll see
8 in the indictment there's a chart for Counts III through X.
9 And that chart in each of them describes what the act and
10 execution of that scheme or that count is.

11 So, for instance, for Count III, you'll see that
12 the date -- that date is going to be the date that the SEC
13 filing was submitted to the SEC. And the act or the falsity
14 in that particular SEC filing was causing Fund III to
15 report -- which fund -- we don't have to use generic
16 names -- so UDF III to report to public investors through
17 it's 2014 10-K, that's that annual filing, false and
18 misleading information concerning the source of funds used
19 to pay distributions and the Bank Loan 6. That's the Legacy
20 Texas Bank loan.

21 Y'all remember there was that nomenclature summary
22 chart? And this is where you're going to have to,
23 unfortunately, use it because of the way we have to write
24 the names.

25 So there's two ways that they lied in that one.

1 One, how they were going to repay Legacy Texas Bank's loan.
2 And number two, where their distribution for money was
3 actually coming from.

4 You'll see -- and you've got the bank records for
5 Legacy Texas Bank, and you've also got a summary chart.
6 They only make four payments, even though they're supposed
7 to be made quarterly. And you can look at the underlying
8 documentation, you can trace the money looking at the bank
9 accounts and looking at the wires in and wires out. And by
10 doing so, you will be able to see that the money came from,
11 not UDF III, even though they were telling the investing
12 public that's what they were going to do.

13 Count IV -- and again, each of these has its own,
14 but Count IV concerns UDF V's 10-K for that same time
15 period. And in that particular one, this one, false and
16 misleading information concerns the loans originated and
17 funded by UDF V, while concealing that the loans were made
18 to developments that had previously obtained loans from an
19 earlier fund entity and that UDF V loans were used to pay
20 off loans from that earlier fund entity.

21 And in that, you can look at the various pages of
22 the SEC filing. So you would go to that particular 10-K.
23 For instance, on page 7 it explained their investment
24 objectives. And nowhere in there does it say loaning money
25 to III, IV, to pay off their loans so we can pay

1 distributions to earlier investors.

2 And also we have, "We will not make loans to
3 participate in real estate investments with, or provide
4 credit enhancements for our affiliates."

5 And then there's that allocation policy at
6 page 455 and all those shall notes that they told the
7 investing public that they would not do.

8 And then 412 is a summary exhibit. And you heard
9 the testimony about how the money was used from UDF V's
10 investors to fund these other loans.

11 Count V was filed on May 15, 2015. And that is
12 the 10-Q for the UDF III. Again, the false and misleading
13 information concerning the source of the funds to pay
14 distributions and the fact that it did not indicate the
15 Bank 6 loan was concealing that funds were dry from
16 investors in UDF IV.

17 Defense counsel made a big deal, big deal about --
18 I think it was Government's Exhibit 420. Special Agent --
19 or excuse me, Forensic Accountant Martinez didn't consider
20 the fact that in 420, UDF IV had enough money in other bank
21 accounts. Well, that's in the bank records. It's right
22 there plain as day. But the defendants are still the ones
23 that made the decision to get money from a wholly different
24 entity to fund that.

25 They made that decision. Why? Don't know. But

1 on Government's Exhibit 420, they made that decision.

2 Count VI. This is another 10-Q. This is a 10-Q
3 for UDF V. And the falsity is concealing. Again, those
4 loans were made to developments that had previously obtained
5 loans from an earlier entity.

6 Count VII. This concerns -- again, this concerns
7 UDF III. And the false and misleading information concerns
8 Legacy Texas Bank again and then also the information
9 concerning the source of funds to pay distributions.

10 They had multiple opportunities to tell the
11 investing public, "Hey, we don't have quite enough money
12 right now. We're going to get a loan from one of our other
13 funds, and we're going to pay off this UDF III loan, so we
14 can pay back these earlier investors' money." They didn't
15 do that. They made the decision not to do that.

16 Count VIII. Again, this is concerning UDF V. And
17 in this particular one as well it's the fact that they
18 weren't disclosing UDF V loans that were being used and paid
19 out like that just so the distributions could be going to
20 UDF III.

21 Count VIIII, concerns the 10-Q filed November 16.
22 And the same type of thing, the distributions, where the
23 money was coming from. And then also the fact that Legacy
24 Texas Bank was not able to be paid. It was now being paid
25 by UDF V's investors.

1 I urge you to look at the summary exhibits and
2 look at the back-up documentation.

3 And on that December 9, it is a mad scramble.
4 Alice Anne Brown, bright and early December 9, she starts
5 emailing the defendants that agreed they would be paid by
6 December 9 -- or before December 10.

7 And if you look at those emails, you're going to
8 see Defendant Wissink, he does the same thing he'd been
9 doing every month before. The same thing he did in those
10 other 60, along with his other co-conspirators, he starts
11 figuring out, "Where are we going to do a draw from? We've
12 got to get that money." Their friend, Mr. Etter, had just
13 said the week before that they didn't have the money to pay.

14 Government's Exhibit 577, that's uncontroverted
15 evidence that Mr. Etter said on that phone on that day, on
16 December 3, "We didn't expect to make that payment either
17 and we don't have the money to pay it."

18 And then finally, Count X. Count X is the SEC
19 filings for UDF V and now -- because they are now -- also
20 UDF V is being used to pay distributions to the UDF III
21 investors. It has both the loans, the information, lack of
22 information, false information about the UDF V loans, but
23 also they're not disclosing that they used money prior to
24 that filing to pay UDF III's investors.

25 This chart, it's sort of all in one place,

1 Government's Exhibit 413. This chart shows the times that
2 those UDF V investors, the people, the men and women that
3 were told there wouldn't be any affiliate transactions.
4 This shows all the occasions with UDF V where their money
5 was used.

6 UDF IV, those SEC filings, they acknowledge they
7 were going to do them there. Now, they didn't tell the
8 investing public that we're going to do -- we're going to do
9 affiliate transactions so we can pay UDF III. They never
10 said that, because they knew if they said that kind of
11 thing, who would invest in UDF V?

12 But here are the occasions in Government's
13 Exhibit 413 when UDF V's money was used.

14 When Mr. Greenlaw testified, he didn't say
15 anything about that other member of the board of directors,
16 Mr. Kahane.

17 You heard Mr. Kahane say that he understood that
18 UDF V would not do affiliate transactions. You heard
19 Mr. Kahane say, if an affiliated transaction were to occur,
20 it must be considered by the board. You heard Mr. Kahane
21 say that affiliate transactions must be disclosed. The
22 parties have to be identified by name, their relationship
23 has to be described. The transaction has to be described
24 carefully and distinctly.

25 You heard Mr. Kahane say he would have considered

1 money going from UDF V to UDF III to pay investors to be an
2 affiliate transaction and he would not have approved it.

3 You heard him say he would have considered money
4 going from UDF V to pay the UDF III bank loan to be an
5 affiliated transaction and he would not have approved it.

6 You heard him say he would have considered money
7 going from V to retire a UDF IV loan to be an affiliated
8 transaction and he would not have approved it.

9 I ask you, ladies and gentlemen, go through
10 Government's Exhibits 350, 349, go through them. We didn't
11 sit here and go through all those pages and pages of emails,
12 but I urge you to do that. And when you look at the
13 chronology, each one, it's going to go something like this.

14 Mr. Vlasak who's on that, the other guy by the
15 name of Sanchez, and I think there was a female at one
16 point. They sent an email to the UDF folks. It goes, "Hey,
17 this much ACH. This much cash has got to be funded."

18 And then what you'll see is the mad scramble to
19 either issue a paper to do an advance request, or figure out
20 some way to get the money over into a UDF III bank account.
21 I ask you to read the emails.

22 Look at Government's Exhibit 410 which puts all
23 those 350 through 409 in one place.

24 Ladies and gentlemen, we're not here because
25 Mr. Martinez traced it and it only happened like five or six

1 times. We're not here because he traced it happening like
2 10 or 20 times. He traced the same thing happening 53 out
3 of 60 times. And that is money coming from a subsequent
4 investor in order to pay distributions to somebody that had
5 invested before them.

6 Look at the things that they were doing beyond
7 just using investors' money. Covering Greenlaw's margin
8 account. And this is at Government's Exhibit 414 that sort
9 of goes across the screen. UDF paying UDF I's Veritex loan.
10 UDF paying UDF III's Legacy loan. UDF IV's Capital Bank
11 loan paying UDF III's Veritex loan. And UDF V, ultimately,
12 on December 9, paying UDF III's Legacy loan.

13 One of the instructions Judge O'Connor gave you is
14 direct and circumstantial evidence. Read that. It goes
15 back to sort of what I brought up on the front end on
16 Wednesday. This is not television. I like those shows, all
17 of them, but it's not. And you're not to consider any
18 distinction between direct and circumstantial. They're
19 treated the same. And that's one of the instructions that
20 Judge O'Connor gave you.

21 So what do we have here? Some of the evidence.
22 We have Blake Buffington's testimony that on September 3 and
23 then on October 17, there was a sales pitch given by that
24 man right there. And in that sales pitch, that man said,
25 "The way to move forward" -- "the path forward is we'll take

1 y'all's loans in I and III and IV and we'll roll them into
2 V. That's the path forward."

3 James Dorney's testimony, because he wasn't at the
4 second meeting, but he was at the first. Matt Parker's
5 testimony, the spreadsheet notifying the SEC of what he'd
6 seen. Casey Ford's testimony that, each time a distribution
7 was needed, there ended up being some backroom conversations
8 over there at Centurion.

9 Tyson Walters' testimony that each time they
10 needed a distribution an advance request was done. And
11 then, again, I go back to, read the emails. Please read
12 them.

13 Some of the arguments just hearing the
14 cross-examination in this case that I expect may be made or
15 some takeaways might be, well, the developers' loans were
16 ultimately paid off.

17 Judge O'Connor just read the jury instructions to
18 you and you will have a copy of them. Nowhere in the law in
19 the United States of America or in the instructions that you
20 were given does it say that that is a defense when wire
21 fraud or securities fraud is committed. Doesn't matter.

22 The banks got paid back eventually. Nowhere in
23 the jury instructions does that say, oh, no harm, no foul.
24 The person's not guilty if the bank didn't lose a dollar.
25 Nowhere.

1 It was suggested it was a good deal for the
2 developers. I'm not really sure how refinancing a loan from
3 V -- that was at IV is a good deal when the interest rate is
4 the same, but okay. Sounded like a good deal for UDF III's
5 investors, though, for them to get their 9.75 distribution.
6 But even if it was a good deal for the developers, that is
7 not a defense.

8 It was a good working environment. No doubt. It
9 sounded like a lot of people really did and still do enjoy
10 working there. But ladies and gentlemen, that is not
11 relevant. That is not a defense.

12 Nowhere in the jury instructions does it say,
13 "Well, if everybody enjoys their job, it's not a crime."

14 I had an error here. It's Government's
15 Exhibit 429. That's that summary exhibit. So when you get
16 the indictment, you can go through and -- you know, you can
17 write on the indictment if you want so you can figure out
18 which entity is which entity.

19 You'll see in the beginning of the indictment,
20 there's a lot of descriptive information about financial
21 institutions, bank account numbers, the organizational
22 charts of these different UDF entities. You only heard a
23 couple of them named, but there's a lot of UDF entities
24 listed there, and you'll need that chart for that.

25 One thing I think's very telling is to do a

1 comparison of UDF III and IV versus UDF V. In UDF III and
2 IV, there was no promise to avoid affiliate transactions in
3 the SEC filings, funds moved between III and IV, and every
4 one of them agreed that it was permissible.

5 V, there was a promise in the SEC disclosures that
6 they would not engage in the transactions, money moved from
7 V to IV and III, but the defendants now still argue the same
8 thing they were doing before is okay.

9 I go back, ladies and gentlemen, to something I
10 started with. And that is, you must not be influenced by
11 bias, prejudice, or sympathy, and you can't consider the
12 sentence in this case, or punishment.

13 I ask you, ladies and gentlemen, to listen to the
14 closing arguments of defense counsel. When they start
15 talking about, "Oh, somebody's such a nice person" or
16 anything that might tug at your heartstrings, go back to
17 page 2 of the jury instructions. You can't do that.

18 It's not television. Just -- in the United States
19 of America, just because somebody wants something really bad
20 or just because somebody has done something good in the past
21 in their life, just because something starts off as a good
22 idea, no doubt, it sounded like it was a great idea.

23 The defendants in this case, at a certain point,
24 that good idea started running out and they started having
25 to take money from investors in UDF IV so that they could

1 keep on paying UDF III. And when that money started running
2 out, they started taking UDF V investors' money.

3 Ladies and gentlemen, this is a Ponzi-like scheme.
4 They were taking money from later investors so they could
5 pay distributions to earlier investors. They can sugarcoat
6 it all they want, but that's what it is.

7 And I'm going to ask you to find them guilty of
8 all 10 counts.

9 MR. STEPHENS: Your Honor, I have a few objections
10 that I would like to take up at sidebar.

11 THE COURT: Okay.

12 (A sidebar was had.)

13 MR. PELLETIER: Please the Court.

14 THE COURT: Thank you, yes.

15 MR. PELLETIER: Good morning, ladies and gentlemen
16 of the Jury. It's been a long short two weeks, and I thank
17 you for your attention during this time. I know they've
18 been long days, but this is, as you know, very important to
19 us.

20 So I started off my original opening statement by
21 telling you that the government got it wrong. And I think
22 the evidence, I believe the evidence showed exactly that.
23 And I'm going to walk you through, not only how the
24 government got it wrong, why they knew they got it wrong.
25 I'm going to focus on the bank evidence, but I'm going to

1 talk about the case -- the entire case.

2 So I don't know -- so the first thing we know,
3 ladies and gentlemen of the jury, it's a real business,
4 building real communities, real jobs. Operating
5 continuously for 18 years, you know that.

6 And most important, the notion that there was no
7 money, that there was some reason to do this because there
8 was no money, or as the prosecutor -- the prosecutor's words
9 that they used were, there wasn't enough, or the real
10 reason -- or the real reason they did this, certainly wasn't
11 money, but we'll talk about that.

12 So if it's a real business and a real company,
13 what did the prosecutor just tell you? What did she say in
14 opening statement? "I expect the evidence is going to show
15 this is much like a Ponzi scheme." Now, why? Why are you
16 using the words "Ponzi scheme"? Because they're
17 inflammatory, right? Because it makes people go, "Oh, my
18 goodness, a Ponzi scheme"?

19 Well, the fact that they believe it's a Ponzi
20 scheme is why we're here today. But we know it wasn't. It
21 never was. Why is that why we're here today?

22 You heard Agent Martinez -- or excuse me.
23 Mr. Martinez, who's an analyst with the FBI, he said, when
24 they asked for more resources, they told him it's a
25 multi-hundred million- -- he didn't know whether it was a

1 billion or hundred million dollar Ponzi scheme, in danger of
2 imminent collapse. We need resources. We have a billion
3 dollar Ponzi scheme here. That's not true. And that
4 predated the search warrant.

5 And then they got a search warrant. And what
6 happened in 2016? Nothing. 2017, nothing. 2018, nothing.
7 This Ponzi scheme, this billion dollar Ponzi scheme is on
8 the verge of collapsing. 2019, what did the government do?
9 Nothing. 2020, five years, nothing. And here we are today,
10 2021, and now we see what it is. Let's talk about what it
11 is.

12 So first of all, if it were a Ponzi scheme, we
13 would expect to see a front company with no real value,
14 investor money syphoned off by executives, jilted investors,
15 lack of transparency, that quickly collapses upon discovery.

16 And, of course, none of that is present here.
17 What did the evidence show? UDF funds fully deployed.
18 Any -- excuse me. What you didn't hear. Did you hear any
19 UDF employee -- I think I read that wrong. Yes. What you
20 didn't hear, any UDF employee providing testimony about a
21 criminal scheme. It's not just that they're happy about
22 their jobs. That's not what they said, "I love my job."
23 They said there's no criminal activity going on here.

24 Any credible witness offering evidence of a
25 criminal scheme? Did any witness come up here, any one, and

1 say there was a criminal scheme? Was there any evidence of
2 misappropriated money? Zero. Any attempt by the government
3 to understand the business economics? Agent Martinez said
4 no. Why? It's inconvenient.

5 Any evidence that the banks were misled or
6 suffered any harm? They paid their interest payments late.
7 Well, I'm not so sure that's true. There's a grace period;
8 it's not late. And they did it consistently. Why? Because
9 they're a running a business.

10 Any evidence that the investors were misled or
11 suffered harm? No. Any evidence that anyone at UDF
12 intentionally did anything improper? No.

13 Any evidence to corroborate the prosecution's
14 hypotheticals? No.

15 What you did hear, you did hear that UDF funds
16 were fully deployed, collateralized, generating significant
17 income. We saw on this front page that I showed you,
18 one billion in invested capital, 1.8 billion in revenue, a
19 real business. Transparent, properly disclosed. Still
20 conducting business to this day. Fully repaid all bank
21 loans. All investors benefited.

22 UDF provided unfettered access to outside experts
23 after the search warrant. And before, remember when SK
24 Research, "Well, we don't really understand these
25 transactions."

1 "What do you want us to do?"

2 "Would you hire someone?"

3 "Yes."

4 "Who?"

5 "Baker Tilly."

6 Bring them on. Bring them on. Ernst & Young,
7 come on in. Thompson & Knight, you heard Mr. McCormick,
8 come on in. Anything you want to look at, please do.

9 Forensic Risk Alliance, Ernst & Young, we
10 cooperated with the government investigation. Anybody you
11 want to talk to, do. Please do. Ask any question you want.
12 Ask for any document. You got them all. You took every
13 single piece of paper out of their offices.

14 The executives, these people, volunteered to go,
15 "What do you need to know?"

16 "Talk to the government." Did you hear anything
17 about anything they said that was false? What criminals do
18 that?

19 Greenlaw volunteered -- Mr. Greenlaw volunteered
20 to appear before the grand jury. Who does that? Criminals?
21 No. Not a single dime misappropriated. You didn't hear
22 evidence about one dime that went into someone's pocket that
23 wasn't supposed to be there. Not one.

24 They did the opposite, ladies and gentlemen, of
25 what criminals do.

1 Now, the judge is going to instruct you and the
2 judge is going to tell you that we start with a clean slate,
3 all these defendants. And he already has told you that.
4 And the law does not require a defendant to prove his or her
5 innocence or produce any evidence at all.

6 The government, as you know, has the burden of
7 proving each defendant guilty beyond a reasonable doubt.
8 Not just a reasonable doubt, beyond a reasonable doubt.

9 And if it fails to do so, you must acquit any
10 defendant whose guilt has not been proven beyond a
11 reasonable doubt.

12 In determining whether the defendant acted with
13 criminal intent, if you have reasonable doubt as to whether
14 the defendant had a good-faith belief that he -- what he or
15 she was doing was legal, you must acquit the defendant and
16 say so by a verdict of not guilty.

17 They had to have a good faith belief they what
18 they were doing was right. That's what all the evidence
19 shows. And when a prosecutor tells you that just because
20 someone's nice, it's not a defense. Well, the judge is
21 going to tell you something that's a little bit different
22 than that.

23 You remember Mr. Greenlaw, we called Mr. Towey,
24 who said he's known this man for a long time and he has a
25 reputation for honesty, integrity.

1 The judge is going to tell you that that type of
2 evidence, evidence of a defendant's character which is
3 inconsistent of those traits of character ordinarily
4 involved in the commission of a crime charged may, in and of
5 itself, despite what the prosecutor told you, give rise to a
6 reasonable doubt.

7 The government must prove beyond a reasonable
8 doubt that the defendants had the specific intent that they
9 intended to do what the law forbid. And the judge is going
10 to tell you, has told you, that the mere utilization of a
11 financial institution in the transfer of funds does not
12 affect a financial institution.

13 Now, let's just talk quickly about the financial
14 institutions. All loans are paid back in full. What the
15 prosecutor called a mad scramble at the end of the month
16 when the bill was due, a mad scramble. I don't think the
17 evidence was that at all.

18 But anyone who has ever run a business, everyone
19 has always balanced a checkbook, it's to make sure that, at
20 the end of the month, that money is there. It's not a
21 crime, okay, to make sure that -- we heard payroll. Every
22 business in America pulls the money together the day before
23 payroll is due. It's not a crime. It's the way businesses
24 are run. Maybe not the way the government's run, but it's
25 the way businesses are run.

1 And I'm going to go quickly through these. You
2 saw Alice Anne Brown, paid in full. Any negative impact on
3 the bank? No. Mad scramble? Nonsense.

4 Veritex Bank, "Were you repaid on every loan?"

5 "We were totally repaid on every loan."

6 Capital Bank, "Performed as required on the loan?"

7 "Yes."

8 "Totally paid in full, Independent Bank?"

9 "That's right."

10 And how about the investors? How about the
11 investors? UDF performed as they expected. You remember
12 those two government witnesses?

13 "Can you think of any restriction on what UDF III
14 can do with that money once it gets it?"

15 "I don't believe so."

16 "Mr. Haan, would it surprise you that they said
17 they will be making loans to common borrowers?"

18 "It wouldn't surprise me."

19 "So other than the prosecutors telling you the
20 money was simply going to UDF III investors from IV, has
21 anybody else told you that?"

22 "No."

23 Mr. Murphy, the broker/dealer, "Did you know that
24 UDF III, II, IV, and V had common borrowers amongst them?"

25 "Yes."

1 Mr. Breault, "We read all the prospectuses, all of
2 our due diligence, we knew this company. We spent a lot of
3 time" -- and by the way, just so you know, Mr. Murphy said
4 it took him two years to understand this business. Two
5 years before he would recommend it to his investors. He
6 looked at everything.

7 "And, Mr. Breault, did you buy stock?"

8 "I did."

9 "How much of this stock did you personally buy?"

10 "I personally hold three-quarters-of-a-million
11 dollars."

12 These investors knew what they were buying. And
13 they were -- there's no way in which they suffered any harm
14 at all.

15 UDF was a real business. We know that. All of
16 these bankers, "Did you go there and look at the
17 properties?"

18 "Yes."

19 "Were they there?"

20 "Yes."

21 "Was it real collateral that you took for your
22 loans?"

23 "Yes."

24 Veritex Bank, "Real land, correct? Real
25 developer?"

1 "Yes."

2 "Did you go look at the properties?"

3 "Yes."

4 Alice Anne Brown, "Did you stand terra firma on
5 these properties?"

6 "No, but I drove by them. They were there."

7 And honesty and integrity, they all told us,
8 "These are people of good character and integrity, that's
9 why we did business with them." Good character and
10 integrity.

11 That works. So what's left? What is left? Mad
12 scramble. Interest payments late. The principal payment's
13 extended, mad scramble. That's not a crime. It never was a
14 crime. Can't be a crime.

15 Here it is, ladies and gentlemen, here's what's
16 left. Remember when Mr. Kahane for the government talks
17 about he wouldn't approve that?

18 The comment said, if anybody ever had told you
19 that the money from investors from V was going to be used to
20 pay distributions to III, would you have considered that to
21 be an affiliated-party transaction?

22 He said, "Yes. Sure. Would have been if it
23 happened that way."

24 And then I said, "Isn't it true that the only
25 person that ever told you that is this prosecutor or the

1 prosecutors in the grand jury and here today?"

2 "Yes."

3 "Okay. Who is that?"

4 "Counsel for U.S. government."

5 They're not witnesses. There was not a single
6 witness who said that, ladies and gentlemen, is indeed an
7 affiliated transaction and that these people believed it to
8 be. That these people believed it to be.

9 So even if you believe something of which there's
10 no evidence, the nonsense that it was an affiliated
11 transaction in somebody's opinion that's not a witness,
12 these people have to believe it -- not a scrap. Not a --
13 not a piece of paper this big says these people, anyone
14 believed that, anyone.

15 So what did we have here besides that? I want you
16 to remember the testimony of Jeff Breault. "And what did
17 you do when you heard there was a search warrant?"

18 "In 35 years, this has never happened to me.
19 Someone that I knew and respected being raided like that. I
20 got on a plane and I flew down there. And I don't know why,
21 I just felt like I needed to be there."

22 And remember, he said he introduced himself to the
23 agents. And then I said to him, "Have they ever, ever, ever
24 called you since then to talk you? Why did you have such
25 confidence in this company? Why did you have 7,000 of your

1 investors" -- "why did you tell them that this is a good
2 investment?"

3 They didn't ever call him? Why? Why? Because it
4 is an inconvenient truth.

5 Ladies and gentlemen, what the government told you
6 is a false narrative. It's a hypothetical. They got it
7 wrong. And they realized they got it wrong 2015, 2016, or
8 2017.

9 Now, they brought in a lot of good email readers
10 here, right? People who could read emails. Now, remember
11 the testimony, there's millions of emails. They must have
12 read about 25 or 30 of the millions, and they want you to
13 say, "Oh, mad scramble. Oh, an email, this is how I read
14 it." You heard the witnesses. You heard the witnesses.

15 During those six years that they -- after they did
16 the search -- and you heard Mr. Greenlaw denied the capital
17 markets. Now we have no access, bank accounts closed,
18 because of a search warrant and nothing else.

19 Six years they maintained the business, maintained
20 their employees. And you heard those employees, nice
21 people? Yes. But that's not what we're saying. They all
22 told you that these were people of great moral character,
23 high integrity.

24 Ladies and gentlemen, the government has got this
25 wrong. They woefully, woefully failed to meet their burden

1 here, and they refuse to do the right thing. After six
2 years they bring you in, and they say, "We traced the money
3 and it wasn't there on the day before."

4 And, oh, the prosecutor told you in closing
5 argument there wasn't enough money, but you saw there was in
6 other bank accounts. Okay.

7 "Why, I don't know," she said. Why -- oh, because
8 you don't know, you don't know, and these people are guilty?
9 Well, the answer is in the evidence. Just-in-time
10 Financing, we don't put the money from Account A into the
11 operating account to pay the distributions until the day
12 it's due. So it's like a payroll account. That's not a
13 crime.

14 You know, when the government's wrong, they're
15 supposed to admit they're wrong. Okay? They're supposed to
16 admit they're wrong, not do this. This is wrong. This is
17 wrong. These people have run a business legitimately and
18 now someone wants to Monday morning quarterback a
19 hypothetical about whether something is, in fact, an
20 affiliated transaction. And not one witness has said it
21 was.

22 Enough. Enough. Ladies and gentlemen, we urge
23 you, there isn't sufficient evidence to prove any, any of
24 these defendants' guilt, not even close. Reasonable doubt
25 is easy in this case. And I urge you by your verdict of not

1 guilty to let these people go back to their jobs. Let them
2 do what they've been doing their entire lives, that's living
3 honorable, decent lives. And the government knows it.

4 Nothing further, your Honor.

5 MS. GOODMAN: Yes, your Honor.

6 May it please the Court.

7 THE COURT: Yes. Thank you.

8 MS. GOODMAN: Counsel, ladies and gentlemen of the
9 jury, conspiracies happen in the dark. And UDF and Brandon
10 Jester operated in the light.

11 Now, first I want to thank you for your time over
12 the past week. I want to apologize, my co-counsel, Jeff
13 Ansley, can't be here due to COVID.

14 But the government has a fundamental
15 misunderstanding about what UDF -- how it operates and what
16 it does. That has been the case for over the past six
17 years. And unfortunately, that is why Brandon Jester is
18 here, a misunderstanding. Whether willful or not, that's
19 why he's here.

20 Brandon Jester is involved in the operational side
21 of UDF. This isn't an operational and development case.
22 It's a disclosure case. And we heard that through the
23 government's challenges of the disclosures as it pertains to
24 auditors, investors, regulators. That's the core of this
25 case.

1 But the evidence that we saw about Brandon Jester
2 was at the asset manager level on the operations, like the
3 people you heard from, Aaron Richards, Jeff Gilpatrick,
4 Casey Ford, the witnesses who worked beside him as an asset
5 manager. And Brandon was an asset manager from 2008 to 2012
6 and then became the director of asset management.

7 So another reason, how do we know this is a
8 disclosure case? Ryan Burkhardt, one of the government's
9 witnesses, when he said that other lenders that work with
10 Centurion do the exact same thing that UDF does with regards
11 to the same land release payments, he was asked one question
12 on redirect by the government: "Mr. Burkhardt, do you play
13 a role in UDF's SEC filings?"

14 When it comes to the operational side of things
15 where Mr. Jester is, the government essentially ignores the
16 fundamental center of the transactions that we do with our
17 borrowers, the economic substance of what our loans do with
18 our borrowers.

19 There are facts in this case that the government
20 is asking you to assume in order to find Brandon Jester
21 guilty of a crime.

22 Assume that there's no collateral between this
23 fund and this fund, a transaction, assume there's no
24 collateral in the middle. Assume that loans are created
25 solely for the purpose of making distributions.

1 Assume that UDF V made loans with UDF III. Assume
2 that modeling projections have to be based on an executed
3 contract. And assume that other lenders do not do what
4 we're doing. The government never asked any other lenders
5 if they operated this way. We did.

6 You heard First Continental and Trez operated this
7 way. Ryan Burkhardt told you that. We asked that, you
8 heard that. That was the first time the government had
9 heard it, too.

10 And in opening last week, we told you about Ford
11 Motors. We said that there's -- we said that it's basically
12 the business decision, the forecast to model, to think about
13 what you're doing in the future. That you're budgeting for
14 future projects. That you're making a plan. And we learned
15 that UDF operated the same way, business forecasts and
16 business models.

17 Because if you don't make projections, you're not
18 going to have work to do next year. And lenders and land
19 developers, they can't stay in business without having
20 future projects. Of course not. It makes business sense,
21 they are running a business.

22 I want to talk to you about Buffington, Blake
23 Buffington, specifically. On direct examination he told you
24 that Buffington couldn't pay its loans. Said in September,
25 I'm out. Can't do it. We have to stop everything.

1 Well, on cross-examination with Mr. Ansley, he
2 said that in 2020 he recalled having a conversation with
3 Jeff Gilpatrick where he did indicate he was going to repay
4 those loans. And we saw the letter. I think it was
5 September 24, 2014, where on direct examination he said,
6 "That letter, I said we couldn't pay." Well, when you
7 really dug into that letter, it's on overhead costs.

8 And he actually said on cross-examination, there's
9 nothing in this letter that talks about we can't repay.
10 That letter, if you really look at it, it talks about
11 projections and repaying in 2015.

12 He also said in cross-examination that he wanted
13 an orderly transition, an orderly wind-down of the business.
14 That is exactly opposite of "We can't pay. We're out.
15 We've got to cease operations."

16 And a wind-down, an orderly wind-down takes years.
17 And it did in this case. 2016 is when the business
18 concluded with Buffington.

19 Also, we heard about advance requests with
20 Mr. Buffington. Remember, September of '14, he said, I'm
21 out, but we saw advance requests in August, September,
22 October, and November of 2014 where Buffington swears that
23 it certifies that the financial status of the loan has not
24 changed since origination.

25 Again and again and again, they certify. And that

1 is what's in writing. There's no, "We're out. We can't
2 pay" in writing. He told you that letter that they sent,
3 that didn't cover it.

4 We also heard from another Buffington
5 representative. We heard from James Dorney. He claims that
6 Buffington was not getting paid overhead. Well, we learned
7 that wasn't true.

8 We heard from another government witness,
9 Stephanie Andreatta. She told you that in September -- or
10 August of 2013 to September of 2014, UDF paid over
11 \$1.2 million in overhead draws. Sounds to me like UDF was
12 still paying.

13 And let's talk about the spreadsheet, the
14 Buffington spreadsheet, where we looked at 11 future
15 projects. The business decision that UDF made to put future
16 projects in a spreadsheet. And when you get back in the
17 jury room and you're looking at the indictment, you're going
18 to see those future projects are nowhere in that indictment.

19 There's 11 projects we talked about. The
20 government brought you two witnesses. We heard from
21 Mr. Bascha on the Friesenhahn property. He told you, "I
22 wasn't really involved in the property. It could have been
23 2013. It could have been 2014. It was in our 2014
24 spreadsheet, that is not inappropriate."

25 You heard from Harry Adams who said in February of

1 '14, UDF submitted an LOI. In May of '14, that company
2 reurged to collect LOIs. Jeff Gilpatrick resubmitted. He
3 said, "We stand on the LOI that we submitted."

4 Mr. Adams said the property went under contract in
5 June. Well, Aaron Richards testified that, "If we're good
6 at our jobs, we're still paying attention to the properties
7 that are under contract because how the market is, things
8 fall apart. Sometimes things don't make it through the
9 feasibility period and you want to go in and scoop the
10 project up. We submitted two LOIs. Clearly there were
11 conversations and there was interest. We put it in our
12 spreadsheet." Nothing wrong with that.

13 We also heard from a number of witnesses who said
14 it doesn't need to be an executed contract, it doesn't need
15 to be in an LOI, and it can go in our spreadsheet because it
16 is a forecast.

17 You also heard from Susan Powell. She said she
18 conducted a trend analysis and it was compatible with the
19 future projects. She also said that Whitley Penn asked for
20 UDF's cash flow analysis. And that's what they got. They
21 got the spreadsheet that UDF created, not our borrowers,
22 UDF.

23 We brought you Jeff Gilpatrick, the individual who
24 actually worked up that spreadsheet. And if you remember,
25 he had 11 binders surrounding him of all the due diligence

1 that he had on the projects that were in that spreadsheet.
2 He told you why he added them and he had reasons for doing
3 so.

4 Then you heard from Brandon Jester himself who
5 told you modeling portfolios with future projects is
6 appropriate, it's common, and I trust my asset manager, Jeff
7 Gilpatrick. I knew he had projects coming down. I knew he
8 had due diligence.

9 That's what we did with our spreadsheet and
10 Buffington knew about it. And how do we know that? We
11 heard from numerous asset managers that were in constant
12 contact with our borrowers. We've got weekly meetings.
13 We've got phone calls; they know about it. And on top of
14 that, Jeff Gilpatrick told you he sent his changes to Matt
15 Parker in an email, and said, "Here are my updates."

16 Now, I want to talk to you about Government's
17 Exhibit 96. Ms. Eggers mentioned it earlier this morning.
18 That's the Whitley Penn loan impairment review in March of
19 2014.

20 As if that document somehow impacts what our
21 future projects have to be based on and that is just wrong
22 for a few different reasons. Number one, the loan
23 impairment review document, the final document is dated
24 March 4th -- I'm sorry. March 6th. We don't even receive
25 Matt Parker's spreadsheet until after that. It has nothing

1 to do with our spreadsheet.

2 Second, if you look at the bottom of that first
3 page of the exhibit, you're going to see that UDF
4 describes -- how it describes how UDF values the loan
5 portfolio. It's based on the market. It's based on home
6 supplies. It's based on current and historic market trends.

7 But the government seized on the sentence that
8 said, "Cash flow forecast also include executed purchase
9 contracts for lots." The government just simply misreads
10 it, and they essentially read in, exclusively under
11 contract. And if you really take a look at that document,
12 you're going to see that that applies to lot sales, but the
13 government disregards that.

14 And we spent a lot of time in this case on draw
15 requests. As if the government is pretending that those
16 draw requests exclusively had to come from our borrowers,
17 and that's not the case.

18 In opening, we showed you the contract that says
19 in our sole discretion we can do this. Our contracts say
20 that. Our borrowers sign that. And then you heard Aaron
21 Richards say, "Sometimes we have these conversations in
22 meetings and then I'll follow up afterwards and send it to
23 the staff, get in touch with the accounting staff. Our
24 contracts allow us to do this."

25 We also heard a lot about the Frisco 113 loan.

1 And that was the loan where Aaron Rogers -- the draw
2 request -- Richards sent to Centurion's accounting crew.
3 This is a land loan pay-down. A new loan.

4 A fact that the government either does not or just
5 will not see, we brought you Aaron Richards the author of
6 the email that we repeatedly saw in this case. And he told
7 you we do this because it's our job to push these projects
8 forward. You cannot move the projects forward unless you
9 release the land.

10 And on those emails, you heard from Linda Visser
11 who told you -- "What does UDF do?"

12 "We provide more documentation than the other
13 lenders who do the same thing as us. We have additional
14 paperwork to make sure that we do this process the right
15 way."

16 And then we've talked a lot about the project
17 level and the portfolio level draws. To this day, the
18 government, I think, just still does not under this because
19 you heard the government ask witness after witness, "Why are
20 we seeing over a million dollar draw request coming from UDF
21 to the borrowers instead of Centurion sending it to us?"

22 As if these are invoices for plumbing or sewage.
23 Of course, they're coming from us. They're refinancing and
24 land releases. We are moving projects forward. This is
25 what we do, and we're allowed to do it.

1 Brandon Jester operates on the operational side of
2 this business? He is not involved in disclosures. He is
3 not involved in SEC filings. He is not involved with
4 auditors or investors.

5 And I want to talk about the jury instruction that
6 applies to these facts. I want to talk about good faith?
7 The judge just instructed you, and you'll have the
8 instruction, but you'll see it says, "If you have a
9 reasonable doubt as to whether or not Mr. Jester had a good
10 faith belief that what he was doing was legal, you must
11 acquit him and say so by your verdict of not guilty."

12 So what evidence do we have of Mr. Jester's intent
13 or his good faith? Well, we know in December of 2020, he
14 voluntarily went in to meet with the government. We know
15 that he spoke to Tim McCormick who was doing an internal
16 investigation. He said he spoke to everyone and he got all
17 the records that he needed.

18 Mr. Jester operated openly, transparently, and in
19 the light, not in the dark.

20 You also heard UDF employees say Mr. Jester has
21 never asked me to do anything that I thought was improper.

22 But instead, the government showed you two emails
23 from Mr. Jester. We saw it countless times, so let's just
24 talk about them. "We need to show it paying off." That's
25 what the email says. It's a loan renewal exercise, there's

1 nothing wrong with that.

2 Second email, "Put everything that is a
3 possibility in there." This is modeling future projects.
4 And I still don't see what the problem is with that. It's a
5 business decision and we had due diligence.

6 And you heard from Harry Adams, "We don't know
7 what we're doing in the next few years, but I know based on
8 my skill and my experience that I'm going to get some
9 projects done."

10 So those two emails, those are the cover-up emails
11 in this case? That's it.

12 I submit to you those are operational asset
13 manager emails between two employees doing their jobs. And
14 that is not sufficient to find beyond a reasonable doubt
15 that Brandon Jester had any intent to commit a crime.

16 Brandon Jester got on that stand, and he told you
17 what he meant in those emails. And Jeff Gilpatrick got on
18 the stand and told you what he understood from those emails.

19 You know, that spreadsheet did not rise and fall
20 on the issue of flexibility when it comes to a single future
21 project. Mr. Parker sent us a spreadsheet that included
22 future projects.

23 You know, and keep in mind, Jeff Gilpatrick, he
24 worked at Buffington and then he worked at UDF, he's still
25 at UDF. He knew about those Buffington spreadsheets from

1 his time there, and it continued to his time at UDF.

2 There is not sufficient evidence in this case to
3 have any belief that Brandon Jester had any intent to commit
4 a crime. And by "intent," I mean that the government failed
5 to show any intent for any of the counts. Because when
6 there's no showing of an intent to defraud, you must find
7 that there's no intent across the board, across all counts.

8 And you heard the evidence of Mr. Jester's good
9 faith starting with the government's witnesses. You heard
10 he assisted in good faith modeling of the Buffington loan
11 with other asset managers and with the knowledge of the
12 Buffington personnel, who, again, had future projects in
13 their spreadsheet, too.

14 You heard that he participated in draw requests
15 for new loans and paid down earlier loans to move projects
16 forward, which benefits our borrowers.

17 Brandon Jester is here because the government
18 disagrees with the internal business decisions being made at
19 UDF. This is an attempt at criminalization of business and
20 commerce.

21 You know, and Judge O'Connor instructed you on
22 character, and I want to reiterate something that my
23 colleague said on character: "Because evidence of a
24 defendant's character may give rise to reasonable doubt."

25 And the first time we heard about Brandon Jester's

1 character was through the government's case. We heard from
2 Stephanie Andreatta who said that she's worked with
3 Mr. Jester, she believes him to be honest.

4 On redirect examination, the government got up and
5 put one of those email in front of her and said, "Would an
6 honest man do this?" Her response was, "I still think he's
7 a honest man."

8 We also heard from Jeff Kesler, another government
9 witness, who said, "Mr. Jester acts in a way that you'd
10 expect in this industry. He's honest."

11 Aaron Richards, again, we saw that email over and
12 over and over. And we brought him to you. And he's worked
13 with Mr. Jester and he told you he's honest. And he also
14 explained the Frisco 113 email.

15 You know, and there was some insinuation about
16 money being paid to Mr. Jester that was dirty for the work
17 that he did over a five-year period at UDF. And by my math,
18 that was about \$145,000 a year. That's not inappropriate.
19 It's not motive. There's nothing dirty about it. He does a
20 job.

21 And I think it's important for you to remember
22 that the government ran the search in 2016. You heard about
23 the massive amounts of emails. You heard that Tim McCormick
24 came in and did an investigation on behalf of the
25 independent trustees. And you heard that after he reported

1 his conclusion, every single one of these defendants is
2 still employed.

3 You heard from former UDF employees, you heard
4 from current UDF employees, and you heard from Mr. Jester
5 himself.

6 I don't think the government has come close to
7 proving beyond a reasonable doubt when it pertains to
8 Mr. Jester.

9 And at the end of this case, I am asking you to
10 return a verdict of not guilty to all counts on behalf of
11 Mr. Jester. And I believe that is the only appropriate
12 verdict in this case.

13 Thank you.

14 MR. STEPHENS: Would you like to take our morning
15 recess?

16 THE COURT: No.

17 MR. STEPHENS: Very well. Your Honor, may it
18 please the Court.

19 THE COURT: Yes, sir.

20 MR. STEPHENS: Good morning, ladies and gentlemen.
21 It's good to see you again. I hope everyone is having a
22 good morning so far.

23 As you know, my name is Neal Stephens, and I
24 represent Ms. Obert.

25 What I want to do is take you back a little bit to

1 where my opening statement was. What I'm going to lay out
2 for you are a few things. I'm going to describe the law at
3 the start. And my colleagues have already touched on it a
4 little bit. I'm going to go into a little bit more depth.

5 And then what I'm going to do is I'm going to go
6 back to where I was on my opening statement where I talk
7 about the rules of the road for UDF V, UDF III, and UDF IV,
8 so you basically have a toolbox by which you can marshal the
9 evidence against the charges in the case.

10 And then what I want to do is what I want to talk
11 about the government's investigation and confirmation bias
12 in the way that they conducted their investigation. And I'm
13 going to be talking to you about Mr. Martinez and the way
14 that he analyzed the evidence.

15 And then what I want to do is I want to contrast
16 that against a legitimate investigation, one in which you
17 consider all aspect of the transaction and all of the
18 underlying documents so you can get an accurate snapshot of
19 what happened in those transactions to fully analyze what
20 the intent of these individuals was.

21 And what you're going to see is that they operated
22 in good faith. And what the jury instructions are going to
23 tell you is if they operated in good faith, there is no case
24 here.

25 Then what I would like to do is walk through what

1 I have as smoke and mirrors. And we'll get there when we
2 get there.

3 Finally, what I would like to do is wrap up by
4 summarizing the evidence related to my client, Ms. Obert.
5 Okay?

6 So let's start. And let me start with the law.
7 There's a presumption of innocence. You've heard this both
8 as you were getting impaneled and you heard it again this
9 morning. And it's important.

10 All of the defendants, it's a clean slate. They
11 are all presumed by the law to be innocent. They sit before
12 you innocent until you marshal the evidence against them.
13 That's what we're going to do here this morning.

14 The burden of proof. Mr. Lewis will speak in
15 detail about this. But for our purposes right now, the
16 government has the burden. They have the burden throughout.
17 We have no burden. But what I'm going to try and do this
18 morning is demonstrate the evidence that we brought forward
19 and how that demonstrates that they cannot meet their
20 burden. If they fail to, you must acquit. That's the law.
21 It's the United States of America, that's the Constitution.

22 Good faith. I've already mentioned it. This is
23 an important instruction. It's going to appear at page 13
24 of the jury instructions. You'll have a copy of the jury
25 instructions when you're back there. Please read this

1 instruction.

2 It will tell you, "In determining whether or not
3 the defendant acted with criminal intent, you may consider
4 whether or not the defendant had a good-faith belief that
5 what he or she was doing was legal."

6 If you have reasonable doubt as to whether the
7 defendant had a good faith belief, you must acquit. You
8 must find the defendant not guilty. That's good faith. I
9 will demonstrate to you here today that the evidence shows
10 that all of these individuals acted in good faith.

11 Good character. In her closing remarks, my
12 colleague from the government talked about, well, you know,
13 they're good people. It doesn't mean this. It doesn't mean
14 that.

15 There's going to be an instruction in the
16 instructions, it should appear, I think, at about page 5.
17 And what it says is, "Where a defendant has offered evidence
18 of good general reputation from opinion testimony concerning
19 truth, veracity, honesty, integrity, character, you should
20 consider such evidence." That is on the table here today.

21 We heard it throughout the trial as to all four of
22 the individuals from all of the government's witness.

23 "Evidence of a defendant's character may give
24 right to a reasonable doubt since you may think it
25 improbable that a person of good character with respect to

1 those traits would commit such a crime."

2 That is on the table for you to consider.

3 Willfully. Now, what I want to do is walk you
4 through some of the intent-driven instructions so you
5 understand what the state of mind has to be for the
6 government to prove their case.

7 Willfully. What that means is, the individual
8 executives must have a specific intent to do something the
9 law forbids; that is, they have to act with bad purpose
10 either to disobey or to disregard the law intentionally.

11 Willfully requires proof the defendants acted with
12 knowledge that his or her conduct violated the law. And
13 just think about that against the emails and the other
14 evidence that you've seen in this case. There's no evidence
15 of that. They can't get to this standard.

16 Specific intent to defraud. The government is
17 obligated to prove beyond a reasonable doubt a conscious,
18 knowing intent to deceive or cheat someone. We're going to
19 talk more about this. You heard the evidence from the
20 witnesses on the stand. Can anyone identify a single
21 witness who said that Ms. Obert had a conscious knowing
22 intent to cheat or deceive anyone? Mr. Greenlaw? No.
23 Mr. Wissink? No. Mr. Jester? No.

24 Falsity. A representation -- this is a page 12,
25 19 through 20. A representation is false if it's known to

1 be untrue provided it's made with the intent to defraud.

2 The thing about falsity, when you consider what's
3 at issue here, there is no law, they're charged with
4 securities fraud and wire fraud. There is not a law in the
5 United States that says a company cannot do related-party
6 transactions. There is not a single law in the country that
7 says a company cannot do affiliate transactions.

8 You heard from Mr. Kitchens, he that companies all
9 across America do those on a daily basis. We're going to
10 get to the rules of road, but please understand, there is
11 not a single law that says a company cannot do an affiliate
12 transaction. There is not a single law that says a company
13 cannot do a related-party transaction.

14 All right. I'm also going to point you to some
15 testimony, which we'll get to, from two of the auditors in
16 this case, government witnesses, who said, "Reasonable
17 auditors acting in good faith considering the same
18 transaction could arrive at a different conclusion as to
19 whether something constituted a related-party transaction or
20 an affiliate transaction."

21 Both operating in good faith could reach a
22 different conclusion. You cannot get to beyond a reasonable
23 doubt given that that's the testimony from two government
24 witnesses who analyzed this type of evidence.

25 Conspiracy to commit wire fraud. These are the

1 actual charges now. So to commit wire fraud, there has to
2 be an agreement to commit a crime, the crime of wire fraud
3 where the defendant would know the unlawful purpose and act
4 willfully with the intent to further the unlawful purpose.
5 There's that term "willfully" again.

6 Wire fraud affecting a financial institution.
7 "Did the defendant knowingly devised or intend to devise a
8 scheme to defraud the investing public, shareholders of
9 UDF III, IV, and V."

10 What's completely lacking in this case is any
11 evidence that any of these individuals were trying to harm
12 their investors. And I will prove that to you as we walk
13 through the evidence that we have before you.

14 The defendant had to act with specific intent to
15 defraud and that scheme to defraud affected a financial
16 institution, which Mr. Pelletier has already summarized for
17 you.

18 Conspiracy to commit securities fraud. "That the
19 defendant, and at least one other person, agree to commit a
20 crime of securities fraud."

21 There has to be an agreement to break the law.
22 That they knew the unlawful purpose. And again, that they
23 had to reach that high standard of willful.

24 Securities fraud. These are the substantive
25 accounts. This is Counts III through X. "The defendants

1 knowingly attempted to execute a scheme or artifice to
2 defraud with the intent to defraud."

3 Again, we're back to intent. And that -- when
4 you're considering intent, you have to consider good faith,
5 which is where we started.

6 Securities fraud. "Defense knowingly executed a
7 scheme or artifice to obtain money or property by means of
8 false or fraudulent pretenses." Again, intent to defraud.

9 All right. And affiliate, we talked a little bit
10 about this, and we'll get to it on the rules of the road
11 because we will talk about UDF III and UDF IV and UDF V
12 being affiliates. We acknowledge that.

13 What's different is when the government is trying
14 to extend the term, affiliated or related party, to someone
15 outside of that. Centurion, for example. That is not the
16 evidence in this case. So when you talk about control, it's
17 the power to direct or cause the direction of the management
18 policies of a person.

19 UDF was not directing the management. They were
20 not running Centurion. That is not the evidence. And I'll
21 show you some testimony from Mr. Kitchens on that very
22 point.

23 Okay. So that's the law. Now, let me get to
24 Chapter 2 which is the rules of the road. And we did this
25 in opening. And again, what I think is critical in this

1 case is to understand the similarities and differences
2 between UDF III, IV, and V, and how in these transactions
3 everyone is benefiting and that's okay.

4 UDF V, we started on this in my opening a few days
5 ago, right? And the attorney gave you a framework to
6 evaluate the evidence in the case. So for each action that
7 you are considering, identify the correct fund. Are we
8 talking about UDF III, are we talking about UDF IV, or are
9 we talking about UDF V? And then apply the correct rules of
10 the road for that fund.

11 And what I told you in opening statement was if
12 you did that, marshaling the evidence, the answer is going
13 to be, yes, that UDF complied with its policies. And I'm
14 going to demonstrate that to you here this morning.

15 All right. This is another slide that I used in
16 my opening statement. This comes from their disclosures.
17 And this is what UDF V said it would not do, and we don't
18 contest that. So here's what UDF V said it would not do,
19 and did not do so.

20 It will not make loans to or participate in real
21 estate investments or provide credit enhancements with our
22 affiliates. UDF will not sell any loan to, acquire any loan
23 from, participate in any loan with UDF affiliates. This is
24 UDF V. The UDF V will not sell any asset to, acquire any
25 asset from, participate in any asset with the UDF funds.

1 And they did not do so.

2 Okay. How do we know that? Well, let's look at
3 some of the testimony. Dale Kitchens, who reviewed all of
4 these transactions and recalled he actually went through and
5 looked at all the documents, underlying the loan files to
6 figure out how the transactions were actually structured.

7 His testimony is that, did UDF V do any of these
8 things? No, they did not. Did UDF V -- that's the first
9 one I have. Did UDF V do any of that, selling any assets,
10 acquiring assets from, participating in any assets, did they
11 do any of those things? No, they did not. That's the
12 testimony.

13 Ms. Obert herself took the stand and subjected
14 herself to cross-examination, and the testimony from the
15 stand from Ms. Obert is consistent with Mr. Kitchens.

16 "Ms. Obert, did UDF V ever originate loans,
17 participate in loans, provide credit enhancements to any
18 affiliate at UDF V?"

19 "No, they did not."

20 "Did UDF V say that they would sell any loan to,
21 acquire any loan from, participate in any loan with any
22 other UDF funds? Are you familiar with that?"

23 They say no.

24 "Did UDF V ever do any of those things?"

25 "No, they did not."

1 That is the testimony in this case. UDF V did not
2 do -- wait. UDF V did what it said it -- I'm going to say
3 this wrong. Let me stop and get it right. What UDF V said
4 it did not do, UDF V never did. All right?

5 So related-party transaction, and I had touched on
6 this earlier. The two auditors from the government got on
7 the stand and acknowledged that this is an area of judgment.
8 This is an area where reasonable people, objective people,
9 acting in good faith could look at the same transaction and
10 reach a different conclusion.

11 The only conclusions we have in this case is that
12 they're not affiliate transactions. They are not
13 related-party transactions. But even if there was testimony
14 going both ways, you could still have all of the executives
15 acting in good faith. Why? Because it's an area of
16 judgment. They cannot get there on the evidence because of
17 this.

18 Here's Mr. Downey. What Mr. Downey says. "Our
19 auditors might have a different view as to what qualifies as
20 an undisclosed related-party transactions that needs to be
21 disclosed?" Yes.

22 When we get back to where we were with Mr. Lawlis.
23 Mr. Lawlis was the audit partner at Whitley Penn. What that
24 means is that a reasonable accountant, both acting in good
25 faith, could reach a conclusion that is different regarding

1 whether a particular transaction is a related-party
2 transaction.

3 Yes, I believe so. Right? So it's Mr. Downey.

4 No government witness said we did this. No
5 government witness actually looked at the transactions and
6 said that UDF V did something that UDF V said it would not
7 do. That evidence does not exist before you. There can be
8 any guilt on any count related to UDF V based on that
9 evidence. Okay?

10 What can UDF V do? UDF V can do loans with common
11 borrowers. That's okay. And remember, we put up those
12 disclosures that talked about common borrowers. That's
13 UDF V. All of these funds can do transactions with common
14 borrowers.

15 Michael Bodwell, who was the audit partner on both
16 UDF III, UDF IV, and UDF V. I asked him the question:
17 "It's okay for UDF V to originate loans to a common borrower
18 of UDF III and UDF IV; is that fair?"

19 "Yes, I believe so."

20 So that's the auditor.

21 Here's the due diligence analyst, Kevin Eades.
22 For example, the company's first investment -- this is
23 UDF V -- was a \$10.7 million loan to Frisco 113 to refinance
24 the borrower's land acquisition. Frisco 113 is a Centurion
25 special project, and it's a borrower's land acquisition of

1 81 acres of residential land in Collin County.

2 Management indicates that CTMG is not affiliated
3 with the -- Centurion SP is an affiliate of Centurion.

4 "Question: It's not an affiliated transaction,
5 correct?"

6 "Correct."

7 So the auditors are telling you that these are not
8 affiliated transactions of UDF V. The due diligence analyst
9 is telling you they are not affiliated transactions.

10 And then from the investor side, the
11 broker/dealer, Rick Murphy, says the same thing.

12 "Did you know that UDF II, III, IV, and V had
13 common borrowers amongst them?"

14 "Yes. It was disclosed." People knew it. These
15 are not affiliated transactions. These are loans with
16 common borrowers.

17 Let's transition away from UDF V and talk about
18 UDF III and UDF IV and what UDF III and UDF IV can do. I
19 had this slide up in my opening to prepare you that we were
20 going to show evidence that UDF III loans can be refinanced
21 involving a common borrower. And that UDF IV could do that.
22 It was anticipated. It was expected. It's okay.

23 Susan Powell, the audit partner at Whitley Penn.
24 I asked her: "Ms. Obert told you that the money transfers
25 could be made from UDF IV to UDF III to pay off a higher

1 interest rate loan if it's for the benefit of a common
2 borrower; correct?"

3 "Yes. Correct."

4 "Ms. Obert told you and you understood it was
5 allowable under the loan documents between a common borrower
6 in UDF IV and UDF III to do this type of transaction,
7 correct?"

8 "Yes."

9 The outside auditors knew the business practice.
10 They knew how these transactions were structured.

11 Tom Carroci, government expert, came in and
12 admitted the same thing. Government expert.

13 "This UDF IV disclosure that's there will be a
14 refinancing of loans and investments by and between the
15 United Development Funding programs?"

16 "Yes."

17 It was disclosed and everyone knew it, and even
18 the government's experts who looked at it after the fact
19 came in and agreed with our position.

20 Confirmation bias. All right. We talked about
21 Mr. Martinez.

22 "It's fair to say that you did not analyze whether
23 the UDF V investors received any benefit from those other
24 UDF V loans in conducting your analysis?"

25 "That's correct."

1 "It's fair to say that your cash-tracing
2 methodology was the same on the UDF IV transactions that
3 involved a common borrower with UDF III as the UDF V
4 transaction that involved a common borrower?"

5 "I believe that's so, yes."

6 My point with Mr. Martinez, they picked a
7 conclusion and then designed their work to drive that
8 conclusion. And that is an inappropriate way to run an
9 investigation. That's just confirming your bias, but it's
10 not providing the men and women of the jury with the
11 analytical evidence that you need to martial the evidence to
12 reach an accurate result.

13 Same thing, "I did not consider economic benefits.
14 I did not consider economic benefits. I only considered the
15 movement of money."

16 Now, what does he do with the bank accounts?
17 Mr. Pelletier talked about the payroll bank account. This
18 is relevant. What they were saying was that there's
19 insufficient money in an account.

20 "Well, did you look at all the cash available in
21 all the accounts?"

22 "No. I just looked at this account."

23 "Well, had you looked at all the accounts, would
24 the result have been different?"

25 Yes, it would have been different, because in this

1 example that we used with him, they were \$11 million over
2 what he said the shortfall was. It's confirmation bias.

3 Here's another mistake that he made. Remember,
4 the scheme is that all the money is flowing to the UDF III
5 investors, and it's the UDF IV and V investors who were at
6 risk.

7 But if he actually looked underneath his
8 documents, what would he have seen? He would have seen
9 money moving back in other transactions to the UDF IV and
10 the UDF V investors. That is not a scheme to defraud.
11 That's the business as it's operating.

12 Third mistake, and this is of many, and I'm just
13 trying to summarize it in the time I have with you.

14 There are 18 transactions in Mr. Martinez's
15 53 transactions that have documentation in them
16 demonstrating that clear -- and evidence of anyone who's
17 going to read them that there is going to be money paid off
18 those transaction to distributions to UDF III investors.

19 It's open and transparent. It's right there for
20 the auditors. If you're running a scheme to defraud, you
21 don't run to your auditors with the evidence of fraud.
22 They're going to the auditors with the evidence of this is
23 how we run our business. And I've already shown you from
24 the testimony, the auditors understood their business and
25 didn't have an issue with it.

1 So I asked Mr. Kitchen: "What does that chart
2 mean?"

3 It represents that the 80 transactions over the
4 60-month period were selected for testing. It shows that
5 the transparency of the company in giving access to these
6 that were supposedly problematic transactions to the
7 auditors. Open and transparent.

8 Mr. Ferguson said the same thing.

9 "The fact that these documents exist in the
10 journal entries demonstrates what to you about
11 transparency?"

12 "The company was transparent in their accounting
13 practices."

14 Mr. Martinez. Let's talk about his cash-tracing
15 model.

16 "Mr. Martinez, has that cash-tracing model ever
17 been qualified by any federal court to provide expert
18 testimony on your theory?"

19 "No. Never."

20 What do the other experts say?

21 "Mr. Kitchen, in your 40 years of experience as a
22 financial fraud investigator focused on real estate
23 transactions, have you ever seen a fraud investigation based
24 exclusively only on a cash-tracing theory?"

25 Answer: "I have never seen a fraud investigation

1 based just on that." Forty years.

2 "Mr. Ferguson, in your 20 years of conducting fraud
3 investigations, have you ever seen a financial fraud
4 investigation based strictly and exclusively on simply cash
5 tracing?"

6 "No."

7 It's confirmation bias. That's not enough.

8 Legitimate investigation. What Mr. Ferguson, and
9 particularly Mr. Kitchens did, is they went and read all the
10 documents. Right? They looked underneath these
11 transactions.

12 And I would direct you to Shahan Prairie. Let me
13 give you the exhibit numbers. And I know you don't have
14 notebooks, so bear with me. Defendants' Exhibits 3905 to
15 3924. It's the start of the 3900 series. Most of our
16 exhibits are in the 3000 to 4000 series. Please review
17 those.

18 These are the documents that you are going to see,
19 and they're going to show -- this is on the UDF IV example.
20 What you're going to see is what we covered before. And I'm
21 not going to go through this at length; Mr. Kitchens did.

22 There are benefits flowing to UDF III and
23 IV investors, and then there's the subsequent loan. When
24 the project's in the next phase, the bulk of that loan is
25 going to come to the common borrower. And he's going to

1 build to get to where they've got finished lots to sell.

2 But a portion of that loan proceeds has to go pay
3 off the original UDF III loans. It's business. Banks do it
4 all the time.

5 Same thing with the UDF IV and III loans. There
6 are benefits flowing in all directions. Everyone is
7 benefiting here. That's good business. Good faith.

8 Here's Mr. Martinez's analysis by contrast. He's
9 just looking in one direction to confirm the bias that he
10 arrived at his investigation with. That's not objective,
11 and it doesn't provide you the information you need to reach
12 an accurate result in this case.

13 Smoke and mirrors. I'll go through this quickly.
14 The cash tracing, we've already covered.

15 Hypotheticals, Mr. Pelletier covered.

16 Solely to pay distributions, completely ignores
17 the common borrower. And we demonstrated that to you on the
18 two charts I just had up, right?

19 UDF controls Centurion. No, they do not.

20 Mr. Kitchens is clear as a bell, and this is the evidence in
21 the case. That also goes to the definition of control.
22 This is the prosecutor asking the questions.

23 With respect -- the answer: "With respect to the
24 loan but not with respect to the entity and the man,
25 Mr. Moayed, there's no way that you can describe it as

1 control of the borrower or an affiliated transaction just
2 because there's that provision in the lending contract."

3 He's talking about the discretionary advance
4 language in that contract. And the testimony from that
5 stand from an expert with 40 years in the field doing
6 affiliated transactions and reviewing related-party
7 transactions, there is no way that that provision in that
8 contract constitutes control such that it would be an
9 affiliated transaction. No way.

10 Cash from operations. And the relevant point
11 here, cash from operations is measured over a period of time
12 and you don't have a conclusion until the end of that
13 period. So if the end of that period is measured to
14 December 31, you don't know what the cash from operation is
15 until you get right to December 31.

16 What the government is suggesting is that on
17 December 22, they're going to take a snapshot in time and
18 say you had \$7 in your checking account, therefore, you do
19 not have cash from operations to cut that \$100 check. That
20 is not the way it works in accounting.

21 How do we know that?

22 Mr. Kitchen again, "In your 40 years of conducting
23 fraud investigations, have you ever seen a regulator suggest
24 that cash from operations should be measured at a specific
25 point in time in the middle of the time period under review,

1 just like the example I gave you?"

2 "No, I have never encountered that. Not a single
3 time. That is not the way you interpret cash from."

4 All right. I'll wrap up here quickly with a
5 little bit of review of the evidence about Ms. Obert.

6 What did we hear? Audit partner, Michael Bodwell,
7 worked with her for 13 years. Smart, responsive,
8 professional, honest, respectful.

9 And not just Ms. Obert, her entire team. It's the
10 way they run their business, all of them.

11 Jeff Lawlis. Smart, responsive, polite,
12 respectful. "If I asked her questions, she gave us
13 responses. If she didn't have the information, she sent it
14 to someone on her team, members of her team brought us back
15 the information we needed."

16 Susan Powell. Audit partner, UDF III. These are
17 three audit partners that covered the three funds. Smart,
18 responsive, friendly, respectful, polite.

19 Stephanie Braislin, also Whitley Penn, responsive,
20 her team, responsive.

21 Cheryl Cox, who works for Ms. Obert and has for
22 years and years, supportive, mentored her, helped her go to
23 school at night so she could get her agree and become a CPA.

24 Adrianna Tidwell also worked for her. Good
25 mentor, absolutely. Loved working for her. That's

1 Ms. Obert.

2 What did the government put on the stand? How
3 many witnesses took the stand and said anything negative
4 about Ms. Obert? Think about it right now. Think about it.
5 How many? Zero. Not a single witness.

6 It's for those reasons, ladies and gentlemen, that
7 we are asking that you return a verdict of not guilty on all
8 counts as to all defendants.

9 Thank you very much for your time.

10 THE COURT: Thank you.

11 Mr. Lewis.

12 MR. LEWIS: May it please the Court.

13 THE COURT: Thank you, sir.

14 MR. LEWIS: The last, but hopefully not least.

15 Thank you very much for your time. I've watched
16 you and you've been on time, you've been listening very
17 carefully, and we appreciate it. We truly do. It's a very,
18 very important day for all four -- all four of these people.
19 This matters to them a lot. And we appreciate you guys
20 studying the case and arriving at a fair and just verdict.

21 I am going to talk to you a little bit about what
22 the law is and the Constitution. It's a great thing, the
23 Constitution. It applies and protects all of us. And I'm
24 going to spend some time talking to you about that.

25 But I do want to sort of start where I left off in

1 my opening, because, Jurors, I do think that the evidence
2 has shown that UDF was honest, they were open, they were
3 transparent, and they told the truth.

4 They got it right. They got their disclosures
5 right. They got their accounting right.

6 And I would suggest to you, Jurors, that there has
7 been no credible evidence, no credible evidence that any of
8 these four people acted with the specific intent to violate
9 the law. Specific intent.

10 Think about what evidence would I want to see to
11 demonstrate that a person was acting with the specific
12 intent to cheat, lie, and steal, to violate the law as it
13 relates to securities, wire fraud, and the subsequent
14 counts.

15 I would suggest to you that there is no evidence.
16 And I do want to talk to you about what the presumptions are
17 and what the law is. Very, very important.

18 I love actually hearing the judge speak about it
19 both during the voir dire process, when you were being
20 selected, and when he was reading the instruction that
21 you'll have a copy of.

22 And it's interesting because when he read the --
23 when he described the law to you when you first came in,
24 it's almost -- and I'm going to show you -- it's almost word
25 for word as to what he read to you just a few moment ago,

1 which tells you how important it is to the Court, who is the
2 judge of the law, and how important it is and I hope will be
3 to the Jury, who's the judge of the facts.

4 As the Judge indicated, as they sit here, they're
5 presumed innocent. Again, that protects all of us. They
6 are presumed by the law to be innocent. They start with a
7 clean slate until, and only if -- that changes only if the
8 government proves -- meets its burden, proves beyond a
9 reasonable doubt.

10 Judge O'Connor told you the exact same thing --
11 again, without having the instructions before him, but told
12 you the exact same thing when you were being selected, "They
13 begin this trial with a clean slate, they are presumed
14 innocent."

15 Burden of proof. Boy, is this important. It's
16 what our country was founded on. Again, it applies and
17 protects all of us.

18 The government has the burden of proving each
19 defendant as to each count guilty beyond a reasonable doubt.
20 And if it fails to, if you have, Jurors, a reasonable
21 doubt -- and I'll talk some more about this -- then the law
22 that applies to all of us says you must acquit.

23 He said the same thing, Judge O'Connor said the
24 same thing when we were picking the jury, again, without
25 reading it because he knows it. It's not enough for you to

1 say that a person is likely guilty. Maybe there's something
2 going on, but I can't quite put my finger on it. It's not
3 enough for you to say that a person is likely guilty,
4 probably guilty, the proof must be made beyond a reasonable
5 doubt.

6 The judge also said when you were being selected
7 and sworn in, the burden is on the government to prove the
8 defendant guilty and they must do so beyond a reasonable
9 doubt. The burden is solely on the government.

10 Jurors, as the Judge has said, the defense doesn't
11 have to do anything. We could have actually -- consistent
12 with our Constitution, with our laws, we could have sat
13 there and done nothing, asked no questions, called no
14 witnesses, no cross-examination, nothing. And that's what
15 our constitution allows.

16 Of course, we didn't. We didn't. We put on
17 substantial evidence. The cross-examination, I would
18 suggest to you -- we'll go through it in a minute. The
19 cross-examination was so enlightening.

20 But to hear one side of the story without the
21 cross-examination, oh, my goodness, how misleading. And
22 I'll show you that in just a moment. How misleading.

23 Reasonable doubt. So let's talk about what is
24 reasonable doubt. This is the heart -- this is the heart of
25 the instructions in the case regarding your deliberations

1 and your consideration.

2 A reasonable doubt is a doubt based on reason and
3 common sense after careful consideration of all the evidence
4 in the case. And this, I would suggest, Jurors, is very,
5 very important.

6 Proof beyond a reasonable doubt, therefore, is
7 proof of such a convincing character that you would be
8 willing to rely upon it and act upon it without hesitation,
9 without hesitation, without hesitation in making the most
10 important decision of your own affairs. Wow. So the most
11 important decisions of your own affairs.

12 First home purchase. Did you think twice, three
13 times, four times about that? Marriage, starting a family.
14 That's decisions that fall into that category and the way
15 you have to approach and treat this case. I urge you to
16 look at that and think about that, Jurors.

17 Burden of proof. The Judge has told you that it's
18 a strict burden. It's not impossible, but it's a strict
19 burden. The instructions say it's a heavy burden, as well
20 it should be. And I think they would agree that the
21 government, to do what they're doing, it requires a strict
22 or heavy burden.

23 What that means, Jurors, that if there is one
24 reasonable scenario as you talk among yourselves and there's
25 one reasonable scenario that you could think of where UDF's

1 transactions are real, the business was real, they were
2 operating in good faith, that is not guilty.

3 If you're back there, Jurors, as you're
4 deliberating and you're thinking to yourself, well, maybe,
5 it's possible, that is not guilty based on our law.

6 It is the highest burden of proof in the law. It
7 is not a civil case. It is the highest burden of proof we
8 have. Is it possible that reasonable people would differ,
9 it is not guilty.

10 Let's talk about reasonable doubt. Reasonable
11 doubt. And the Judge has given you instructions on
12 witnesses and how to weigh and evaluate their testimony.

13 Do you remember Casey Ford? He came in and
14 testified. He was the accountant from Centurion for three
15 years.

16 And this is really one of the reasons I love
17 practicing law. During cross-examination, you listen to --
18 he was a government witness. You listen to him and you
19 heard one side of the story and you think, Okay. I've got
20 his testimony. I'm going to evaluate him. I've looked at
21 him. I make a judgment like we do every day whether
22 somebody is telling the truth or not.

23 And then on cross-examination, we ask him, because
24 I knew that Tyson Walter, the ex-football player was coming
25 next, and I also know that the Judge imposes a rule which

1 says that witnesses can't talk to each other.

2 So on cross, "Mr. Ford, did you help Mr. Walter
3 with a \$25,000 loan from Centurion?" And all of a sudden
4 you could see the change in the way he was looking and the
5 change in the way he was reacting to that.

6 He reacted, Jurors. He knew exactly where I was
7 going. He thought for a minute, and he says, "I don't
8 recall doing that."

9 Do you remember?

10 And then I said, "Are you saying it didn't happen
11 or you just don't remember?" And I didn't get a straight
12 answer, Jurors. But the -- clearly, the import of his
13 testimony was I didn't get a \$25,000 loan from Centurion.

14 Next witness. Again, if you just listen to the
15 direct, with no cross-examination, it's all one-sided.
16 Cross-examination is a wonderful thing. It really is sort
17 of the crucible of truth. And it's hard to do.

18 You saw part of the cross-examination where
19 Ms. Eggers went at Mr. Jester. It was "Yes or no? Just yes
20 or no."

21 When Mr. Walter came in, we start going into this
22 about whether his lawyer had told him to tell the Judge he
23 can't show up because of the memory loss.

24 Do you remember that?

25 And it took some time, but he finally admitted to

1 it. That, yeah, he had said that he had had memory loss.

2 But then we ended it, and said, "What about this loan from
3 the prior witness? You saw him when he walked out?"

4 "Yes."

5 "Did he help you get a loan?"

6 He, without hesitating, "Yes."

7 \$25,000. Truth? Believable? Reliable?

8 Would you make a decision in the most important of
9 your own affairs, the most important, based on that
10 testimony?

11 Reasonable doubt. With all due respect to
12 Ms. Lawson, who flew in from San Francisco, you will
13 remember she was the auditor who seemed to answer questions
14 in a very long way, the answers seemed to just sort of go on
15 and on and on and on.

16 "Do you actually have any documents of that
17 transaction" -- and these -- I'm not casting blame. I'm
18 not. But I am saying that you have the burden of proving
19 beyond a reasonable doubt. And the witness comes in here
20 who's actually supposed to say, "Hey, I reviewed. I flew
21 all the way into Grapevine, met with the good people of UDF,
22 and interviewed them and talked to them, and then I got to
23 make decisions about their business."

24 "Did you actually have the documents of the
25 transaction?"

1 Answer: "No."

2 "Did you review the documents of the transaction?"

3 "No."

4 Almost exactly the same testimony as Martinez.

5 Would you rely on her, Jurors, in the making
6 decisions for you or your family in the most important of
7 your own affairs?

8 And then at the end. "Well, actually, I'm telling
9 them that Snyder Kearney" -- which is what she said she
10 relied on completely, which certainly could be. Could be.
11 And that's what it can't be. It can't be, could be, maybe,
12 could be, possibly, that's reasonable doubt.

13 We talked to her father, and again, I wasn't
14 asking, "Answer the questions, ma'am. Answer them. Yes?
15 No?" I was actually trying to be -- I was trying to be
16 polite.

17 And I say if an investor receives the benefit that
18 the investor is seeking through the investment that the
19 investor made, in your mind, is that a good thing?

20 Let me repeat that real quickly. The question:
21 If an investor receives the benefit that the investor is
22 seeking through the investment that the investor made, is
23 that a good thing?

24 I don't think that's a trick question. It's not
25 like, "When did you stop" -- and we will talk about trick

1 questions in a minute. Because we heard some trick
2 questions. And some hypotheticals. I will address that in
3 a minute.

4 But I don't think that's a trick question. What's
5 her answer? "That's such a hard question. It could go
6 either way. It's just so complex." And of course, she
7 didn't do anything to look at the document. She went down
8 there knowing that she wasn't going to understand anything.
9 "I don't know. I think that -- that that was up to us to
10 truly understand and we couldn't."

11 Would you rely on her in the most important of
12 your own affairs? Jurors, that is textbook reasonable
13 doubt. Reasonable doubt.

14 Jeff Lawlis. I asked him about related-party
15 transactions. Mr. Stephens put this up on the screen, but
16 it's worth another look. When asking him about
17 related-party transactions -- and he's the auditor from
18 Whitley Penn.

19 Reasonable accountants, reasonable accountants,
20 both acting in good faith, could reach a conclusion that is
21 different regarding whether a particular transaction is a
22 related-party transaction; is that a fair statement? I
23 believe that was Mr. Stephens' question on
24 cross-examination. Again, a fair question, I think.

25 And he said, "I believe so."

1 Is that proof beyond -- when you've got two
2 people, it's fair to give you two opinions in an
3 accounting -- in an accounting or a business decision. And
4 the government's own witness, the auditor from Whitley Penn
5 says "Could have been A, could have been B." And they want
6 you to convict on that testimony.

7 Reasonable doubt.

8 Reasonable doubt, Jurors. When your expert who
9 comes in from FINRA, and he's supposed to, again, give us
10 some information on affiliated-party transactions and
11 these -- all of these documents and everything that you've
12 got before you -- I'm not an accountant, not a CPA, no
13 education consistent with that, never been certified. No.
14 No. Real estate -- real estate.

15 Boy, oh, boy. Compare him with the witness that
16 Mr. Stephens put on who had been doing it for 40 years.
17 Never seen a REIT. Never drafted disclosures. That was the
18 testimony.

19 It's not because Mr. Stephens is trying to
20 embarrass him or anything, but the government is asking you
21 to convict based on this evidence.

22 Would you rely on him in the most important of
23 your own affairs? With you? Your family? Your kids?

24 Reasonable doubt, Jurors. That is what this is.
25 Reasonable doubt.

1 "I can't recall. No. I can't recall. No. No.
2 No. No." And again, you know, he was a nice man.

3 But Mr. Martinez as well.

4 "Have you ever audited a lender?"

5 "No."

6 "Involved in real estate?"

7 "No."

8 "Audited a REIT, correct?"

9 "No."

10 "Auditor?"

11 "No. Me personally, no."

12 "Been on an audit committee?"

13 "No."

14 And we put aside that he just looked at it from
15 one perspective. And he reached the result that the
16 government wanted him to reach. Ever -- no. No. No.

17 Reasonable doubt, Jurors. It's all reasonable
18 doubt.

19 And this is the actual testimony. This is the
20 questions and the answers. Again, I'm sure he's a nice man,
21 but the question is, would you rely on this in the most
22 important of your own affairs? To conclude beyond a
23 reasonable doubt?

24 I suggest to you, Jurors, that the answer is no.
25 Toward the very end, he again said, when

1 Mr. Stephens was asking him, "I did not" -- "Do you contest
2 that those homes built at Shahan Prairie were built with
3 financing provided by III or IV?"

4 "I couldn't tell you either way."

5 He knew. I mean, surely, goodness, he's been
6 working -- what did he say, how long he had been working on
7 the case? It was a long time, I think. I don't remember if
8 he said five or six years.

9 I couldn't tell you either way.

10 That's reasonable doubt, Jurors. And then this
11 one, the last one which it's just almost hard to believe.

12 "Can you describe the difference to the men and
13 women of the Jury of what a land acquisition -- a land
14 acquisition loan is and what a development loan is?" Land
15 acquisition, development, related to this case? They took
16 every computer, every document out of their place back in --
17 six years ago. They knew what the case was about. The case
18 was indicted last fall.

19 Surely, we knew what the issues were. Land
20 acquisition, land development. "I do not know with
21 certainty what each difference is. I do not know what the
22 difference is between a land acquisition loan and a
23 development loan is."

24 Jurors, that's reasonable doubt. That is
25 reasonable doubt.

1 The other thing that the Judge told you --

2 Judge, may I ask you, how much --

3 THE COURT: You have six minutes.

4 MR. LEWIS: Thank you.

5 The other thing the Judge indicated to you is
6 common sense. And this is -- this is really what makes --
7 look, I love the law, but what makes the jury system and
8 this country the best in the world, the jury system, is
9 common sense.

10 The judge tells you in considering evidence, use
11 your common sense. Make deductions that reason and common
12 sense would lead you to make.

13 And that's why, with all due respect to the
14 government, when you keep asking the question over and over
15 if the money went from V to III to pay distributions, would
16 that concern you? And over and over they got: "Yes, of
17 course." But it's a trick question.

18 It completely failed to recognize that there was a
19 transaction, a loan, a value-for-value transaction in the
20 middle, in the very middle. Refinancing your house. Paying
21 off your credit card with part of that. That doesn't mean
22 that -- it's just -- it's a trick question. Isn't it
23 possible?

24 That is reasonable doubt, Jurors.

25 Also want you -- it's fair in using your common

1 sense. Yes, this is not TV. I agree with that. I wish it
2 was TV, but it's not TV. It is serious, serious business.
3 But your common sense will tell you in a fraud case, with
4 the FBI around and their resources for six years, what's
5 missing? Where are the undercover tapes? Where's the
6 undercover interaction between the FBI? They do it all the
7 time. Where is the evidence of misappropriation of all the
8 money?

9 Where is the evidence of unexplained wealth?
10 Living big. Going on plane trips. Buying -- spending like
11 a mad man. Where is the evidence of shredding documents?
12 Where's the evidence of a co-conspirator at UDF or anywhere
13 who went over and said "Brandon, let's not put it on" -- or
14 the piece of evidence where Brandon -- I mean, they were
15 sending emails back and forth. How about an email that
16 says: "Brandon to Jeff Gilpatrick. Don't disclose this to
17 anybody."

18 Nothing. Nothing like that. Nothing. Nothing.
19 No video. No concealing records. No destroying records.
20 No shredding records. And the indictment itself, they've
21 had six years to look. No evidence of any -- just anything.

22 That is reasonable doubt, Jurors.

23 Other -- no money, and, yeah, yes, there was no
24 money lost. I am going to say that. Would you want to know
25 that in a bank fraud case? No defendant took money they

1 weren't entitled to. There's nothing to contradict that in
2 the record.

3 They're still operating business openly. It
4 wasn't a Ponzi scheme. It's not a Ponzi-like scheme. As
5 soon as a Ponzi scheme is discovered, it completely
6 collapses on itself. These people still did business and
7 still do.

8 Jurors, in closing, reasonable doubt, it is a hard
9 guilty beyond a reasonable doubt. I mean, it is hard to get
10 there. It's not impossible, as the Judge said, but there
11 are so many -- the quality of the evidence matters. The
12 quantity of the evidence matters.

13 And when you push it up just a little bit and then
14 you start looking at the cross-examination and the evidence
15 of innocence, this case is not even close.

16 Now, I'll leave it up, very quickly, and I suspect
17 the prosecutor will take it down. And if you leave it up
18 great, but if you don't --

19 But these are questions, Jurors, that you should
20 ask and that the government should answer to you.

21 How is it not reasonable doubt when the
22 Whitley Penn witnesses testified they were okay with UDF IV
23 and V -- I mean, with V -- yes, IV and V, with common
24 borrowers? How is that, in and of itself, not reasonable
25 doubt?

1 How is it not reasonable doubt when all the
2 investors benefit from the transactions at issue? And on
3 down.

4 How is there not reasonable doubt when every
5 expert, including Martinez, testified that Martinez's
6 cash-tracing theory has never been accepted as legitimate in
7 any prior federal fraud prosecution?

8 Let me please say that one more time.

9 How is there not reasonable doubt, Government,
10 when every expert, including Martinez, testified that
11 Martinez's cash-tracing theory has never been accepted as
12 legitimate in any -- in any prior fraud prosecution.

13 Jurors, again, I thank you for your patience with
14 us. And I thank you for your time. And I truly would urge
15 you to go back, review the evidence, review the Judge's
16 instructions, and I would urge you to reach the only, the
17 only fair and just and appropriate verdict, which is not
18 guilty as to Mr. Greenlaw, not guilty as to Mr. Wissink, not
19 guilty as to Ms. Obert, not guilty as to Mr. Jester, all
20 defendants, all counts.

21 And I thank you very much for your time.

22 MS. EGGERS: Ladies and gentlemen, I'm going to
23 put something up here for you, too. I'm going to put a
24 binder that has 365 through 475. I'm going to put a binder
25 that has 398 through 408. I'm going to put a binder that

1 has 387 through 397. I'm going to put a binder that has 376
2 through 386 in it and then 409.

3 None of these attorneys, not a one of them said
4 anything about any of the emails in here.

5 MR. STEPHENS: Your Honor, I object.

6 THE COURT: Okay. Overruled.

7 Ladies and gentlemen, you will remember the
8 evidence and the arguments.

9 MS. EGGERS: They don't want you to look. There's
10 no way to sit here and put each and every email up there.
11 You will have it to go back in the jury room. They don't
12 want you to look at those. They don't want you to see what
13 is glaring. And what is glaring is these transactions were
14 being done every single month for one purpose, and that was
15 to get distributions out the door to earlier investors. One
16 purpose.

17 Yeah, they papered the file. They papered it real
18 good to make it look like Mehrdad Moayedi is requesting
19 draws when he wasn't, to make it look like Blake Buffington
20 was requesting draws when they weren't.

21 The defendants in this case -- or the attorneys
22 have told you that this is just a disclosure case. It is in
23 the disclosures that the defendants promised investors in V
24 that they would not engage in affiliated transactions. They
25 lied.

1 Defendants used an analogy of balancing your
2 checkbook and suggested that's what they were doing. The
3 problem is, it is one person's checkbook with that analogy.
4 What we have here is the individuals who had invested in
5 UDF IV's money being used to balance UDF III's distributions
6 and financing. We have UDF V's investors' money being used
7 for somebody else.

8 That checkbook analogy doesn't hold. Going to
9 say, "Oh, well, it's just-in-time financing." The problem
10 with that is, the defendants are using just-in-time
11 financing of UDF IV's investors' money to pay somebody else.
12 That's the problem.

13 Each bucket of investors was owed a fiduciary
14 obligation and the defendants didn't care. The defendants
15 decided we'll just put it all together.

16 What was driving this ship was making sure these
17 happened like clockwork.

18 The defendants have repeatedly said that this
19 just-in-time financing strategy can be a legitimate business
20 model. And you know what? It may be. It may be. But they
21 got too greedy and they got overextended. They loaned out
22 so much cash that they couldn't make the investor
23 distributions.

24 So to bail themselves out, they had to steal from
25 Peter to pay Paul and paper the file along the way.

1 They say there's no evidence of intent. Then why
2 do all these paper cover ups, all the advance requests, all
3 the participation agreements. Why email -- I mean, since
4 when does a borrower -- or excuse me -- a lender email a
5 borrower to tell them to take a draw on their loan to
6 finance at the same rate?

7 The defendants would have you believe that their
8 business is so complex the government doesn't understand it.
9 Oh, it's real simple. You can read those bank statements
10 and you can see UDF III didn't have enough money in their
11 accounts. You can read the words of Todd Etter on
12 December 3rd of 2015, they couldn't even pay a \$1.25 million
13 quarterly payment that was woefully past due, well beyond
14 the grace period of 10 days.

15 UDF V sent money to III and IV to pay off loans
16 and make distribution to earlier investors. That's real
17 simple, ladies and gentlemen.

18 Ponzi was an American scheme, too.

19 The technicalities the defendants rely on don't
20 change that. It doesn't matter that UDF got liens and other
21 benefits in return. And it doesn't matter that UDF often
22 had third-party borrowers to act as a go-between. They're
23 basically a shell. To come up here and suggest that Mehrdad
24 Moayedi was in control of any of those transactions. Come
25 on now.

1 At the end of the day, UDF V sent money to its
2 affiliates and its affiliates sent assets back in return.
3 You can see the money in those bank statements.

4 The defense questions the simplest of math and
5 says this theory has never been tested in a court of law.
6 I'm going to say, ladies and gentlemen, it happens every
7 single day when we look at our own bank statements. Not
8 enough money in this account, go to another account and get
9 it. The problem is here, these men and women were going to
10 other investors' money to get it.

11 The forensic accountant cash-tracing method is a
12 theory. Again, bank statements don't lie. The money is in
13 there, you can watch it. The emails don't lie.

14 The advance request to draws on Centurion and
15 Buffington loans were not for Centurion and Buffington, they
16 were for these guys to be able to get that 9.75 out the
17 door.

18 Confirmation bias. That's good. I'm not sure
19 what the confirmation bias of Mr. Eades was, or the
20 director, Mr. Kahane, or Ms. Lawson, the person that
21 actually -- it sounds like she almost took heat because the
22 mother company was a co-sponsor to this and she wouldn't
23 agree to let their broker/dealer settle. Sounds like a lot
24 of confirmation bias for her. She even knew a forensic
25 accountant needed to get involved. And Scott Martinez is

1 the guy.

2 Mr. Kitchens is biased, probably not for
3 1.3 million. Mr. McCormick, no bias there for the
4 plaintiff. Mr. Ferguson, I think it was like over \$300,000
5 for three months' worth of work. Probably no bias there.

6 Defendants argue this was a good business in
7 making money. Read the emails, ladies and gentlemen. Some
8 of them are going to say things like this, Government's
9 Exhibit 518, this is somebody trying to get paid.

10 "This is the same invoice we've sent you for the
11 sixth time now. We were supposed to be paid several years
12 ago."

13 544B, "I have spoken with you several times and
14 each time you have told me you will get back to me and have
15 not. This is our final demand for payment."

16 552A, "Couple bills that are going to have to get
17 paid in the next week or two for us to continue on."

18 "I just finished a conversation with TBG about
19 past due bills. At the risk of sounding like Chicken
20 Little, I'm afraid we're hitting a wall where our ability to
21 stretch our dollar may be becoming a liability."

22 That's an employee of UDF telling a superior at
23 UDF this. That's in that email, Chicken Little.

24 This one right here, Government's Exhibit 301.
25 It's an email chain, I believe, between Ms. Tidwell and one

1 of the other ladies at UDF. We're talking about an advance
2 request.

3 "This is to pay investor distributions so we have
4 to ensure it goes out today. The ones we won't fund are the
5 actual draws to borrowers."

6 That tells you the tail's wagging the dog here.
7 That right there. We're going to fund the ones to pay the
8 investors distributions but those poor developers that have
9 to come each month to keep the lights on, we're going to
10 hold those back.

11 Mr. Wissink, "UDF III doesn't have the capital to
12 fund these draws, what avenues do we have for UDF IV to fund
13 a repayment on a Centurion to provide capital to UDF III on
14 Monday morning?"

15 Greenlaw, "Someone needs to fight FINRA."

16 This one's good. "This is the progression of
17 being addicted to distributions." That's from that man
18 seated right there to that man seated right there.

19 Mr. Jester, "Let's fund it from 5030. I can then
20 allocate some money to some of these new loans we'll be
21 closing in the next couple of weeks."

22 Aaron Richards, "That works. Have it pay down
23 1530 in UDF III."

24 Jester, "FYI let's remember to fix this once we
25 finalize some of the new deals."

1 "I have it printed out" -- I have printed this out
2 and put it in the fix-it file."

3 "That one's getting pretty big."

4 "Huge."

5 Government's Exhibit 310, "We need to identify an
6 asset that we can fund \$3 million today from UDF IV to repay
7 1529 and 1026."

8 Wissink, "We need 1.75 million today, and we can
9 figure out the rest later this week."

10 Richards, "Telling Renee Mueller he is wiring her
11 money and she is to wire it back to UDF IV." On what planet
12 does that sound like a legitimate business? "We are going
13 to wire you money and then you are going to wire it to our
14 other bank account."

15 129A, Ms. Goodman talked about whether or not
16 there has to be a contract or not a contract. Government's
17 Exhibit 96 speaks for itself. Whitley Penn was under the
18 impression there were executed contracts. And did we bring
19 in all of the projects and every person from all over the
20 state of Texas for that? No, we didn't, because we have
21 Government's Exhibit 129A. Ms. Goodman didn't talk about
22 that one.

23 Matzinger, letter of intent and draft contract
24 submittal; there's no contract -- letter of intent and draft
25 submittal, no contract. 4S Ranch, no offer yet. Crossings

1 at Carmel Creek, heard Pulte and Ashton Woods are trying to
2 buy.

3 Heather Glenn, it's a Megatel Source deal. Las
4 Fontanas, re-engaging, due diligence. Nor-Tex, letter of
5 intent submitted. Project is stalled. Park Village, needs
6 to complete underwriting and submit an offer.

7 Reserve at Fair Oaks, another came in and had it
8 under contract and then dropped. Gilbert Tract, M/I Homes
9 has under contract.

10 We didn't need to bring in all the men and women
11 across the state of Texas, because Mr. Gilpatrick laid it
12 all out there for you. Those right there, no contract.
13 Whitley Penn led to believe there was a contract.

14 Specific intent. Ladies and gentlemen, this is
15 not a situation where we have people that just got involved
16 on Friday in securities fraud. These people are educated
17 people, one has a law degree. They did this and they did it
18 for years. And they honed their skills.

19 They specifically intended to tell the SEC and
20 everyone else that would read those UDF filings that they
21 were not going to do related-party transaction. They made
22 that decision.

23 Other lenders, this Trez, or however you spell
24 that, and First Continental do it the same way. Ladies and
25 gentlemen, I don't know who Trez and First Continental are,

1 but I can tell you what's not at issue in this case is
2 what's in their SEC filings.

3 It's always rich when somebody says, well,
4 somebody else is doing it, too. Well, that's not a defense.

5 Refinancing and land release payments. That was
6 said a lot. I go back to when does a lender tell a borrower
7 it's time to take another draw to pay down their own loan?

8 Since when does a lender, at the end of the month,
9 on the very same day when that money is due and needed to
10 transfer to UDF III for distributions? When do they do
11 that?

12 The developers' loans ultimately paid off. Again,
13 ladies and gentlemen, that is not a defense. The banks got
14 paid back eventually, that is not a defense.

15 It was a good deal for the developers. It doesn't
16 sound like too good of a deal. Same interest rate from V to
17 IV, but okay, not a defense.

18 It was a good working environment. Again, ladies
19 and gentlemen, that is not a defense to these crimes.

20 Defendants' arguments that they had friends and
21 co-workers come in and said they had good character. None
22 of those friends and co-workers testified that they knew
23 what the defendants were putting into the SEC filings and
24 telling investors. I wonder why they didn't ask that, huh?

25 A few things that show concealing the truth. Look

1 at that SK report, the spreadsheet, why not just say it's
2 future and anticipated contracts? Why not make sure it's
3 clear to Whitley Penn that they knew that. Not telling
4 Mr. Kahane and the board of directors what they were doing.
5 And Defendant Greenlaw and Defendant Jester not at least
6 acknowledging that sales pitch.

7 Ladies and gentlemen, they knew. That email that
8 Mr. Buffington sent, that hurt. That really hurt. Because
9 those two men knew that if they came in here and
10 acknowledged that in October of 2013 this plan had been
11 hatched and they're telling Buffington one thing and telling
12 UDF V potential investors in an S11 they're going to do
13 another. They knew that was a problem. That shows you
14 evidence of their intent, not being truthful with you.

15 The defense says, "Well, the auditors thought it
16 was okay." You know, auditors are not investigating
17 securities fraud. Auditors are not looking at every single
18 email. Heck, they're not even looking at every single bank
19 account. They're looking at the books and ledgers. They're
20 auditing financial statements and testing to see, well,
21 we'll test 10 or so transactions here, we're going to test
22 and see if the numbers crunch, and it looks like it's
23 materially accurate.

24 But Ms. Braislin, she was onto something. Too bad
25 Ms. Braislin, when she found this on February 19, 2014, too

1 bad she didn't call the FBI that day.

2 Look at Government Exhibit 101. She was onto
3 something. They're making sure the credits and debits match
4 and they're checking the numbers. They're not investigating
5 securities fraud.

6 Ms. Powell told you she did not know what she saw
7 in Government's Exhibit 101, but it was happening more than
8 once. You will have that in evidence.

9 MR. STEPHENS: Your Honor, I object to that
10 testimony. It mischaracterizes the record.

11 THE COURT: Okay. Overruled.

12 Ladies and gentlemen, you will remember the
13 testimony.

14 MS. EGGERS: The defendants picked the rules of
15 the game, and they must live by their decision. The only
16 business decision that changed was in their disclosures, and
17 Judge O'Connor has given you the definition of affiliate.
18 The other way wasn't working anymore. They needed to find
19 new people so they could pay Peter with Paul's money.

20 The defendants made a decision to engage in a
21 scheme to defraud, and it was using subsequent investors'
22 money to pay distributions to earlier investors. The
23 defendants made a decision to put investors at risk. They
24 specifically told the SEC and the investing public they
25 would not do.

1 The defendants had to choose failure or fraud, and
2 they chose fraud. And they kept on and on and on and on.

3 Ladies and gentlemen, this is why we're here. And
4 for them to suggest this was some great business. Nobody
5 wanted to talk about Government's Exhibit 577. This is just
6 going great, but they can't pay 1.25 million that they're
7 contractually obligated to pay.

8 Remember Mr. Pelletier was like, "I mean, there's
9 nothing wrong with them not paying the money."

10 And Mr. Downey just happened to take a little
11 note, says, "Well, they were under a contractual obligation
12 to pay us. They could have stopped paying the
13 distributions." But they didn't have enough money to do
14 both. Why? Because they were having to get it from V.
15 They were having to get it from IV.

16 Ladies and gentlemen, I ask you to find these
17 defendants guilty as charged. They engaged in a large-scale
18 scheme, and they did it month after month. And we're here
19 because they were committing wire fraud that was affecting
20 financial institutions and putting them at risk.

21 They were engaging in the conspiracy to commit
22 securities fraud, and they committed substantive acts of
23 securities fraud with each of those SEC filings that are
24 charged. I ask you to find them guilty.

25 THE COURT: All right. Ladies and gentlemen, that

1 is all you will hear. So you will retire here in a moment
2 to your jury room.

3 I will get the jury charge sent up to you. All of
4 the exhibits are in the jury room. So you will be able to
5 look at all of the exhibits that you want to look at, except
6 there are some exhibits that are electronic, so if you would
7 announce that now, please.

8 MS. EGGERS: Yes, your Honor.

9 There's a thumb drive with both parties' exhibits,
10 and any exhibit that was in an Excel spreadsheet or anything
11 that was over 100 pages, they're on the thumb drive so they
12 can be accessed that way. But all exhibits are on there as
13 well, but those are the once that will only be
14 electronically available.

15 THE COURT: Okay. Ladies and gentlemen, so do you
16 all agree with that?

17 Mr. Pelletier?

18 MR. PELLETIER: Yes, sir.

19 MR. STEPHENS: Yes, sir, your Honor.

20 MS. GOODMAN: Yes.

21 THE COURT: So if you want to look at an Excel
22 spreadsheet or if you want to look at an exhibit that was
23 more than 100 pages, it's going to be on the thumb drive.
24 We will get that set up for you. Just send us a note that
25 tells us you want to look at those. We will get those set

1 up for you. I just didn't want you looking for those
2 documents if they're not actually physically there. So
3 please remember that.

4 With that said, go and begin your deliberations.
5 Lunch should be up there. Remember, only deliberate when
6 all of you are in the room. At breaks, if some of you leave
7 the room for a stretch break, whatever, you have to stop
8 your deliberations.

9 (The jurors exited the courtroom.)

10 THE COURT: Okay. Please be seated.

11 Anything else?

12 MS. EGGERS: No, your Honor.

13 MR. STEPHENS: Your Honor, can I just preserve?
14 Thank you, your Honor. And I appreciate you allowing me to
15 do this outside the presence of the jury.

16 I was trying to do it in a way that was not
17 interrupting the flow of the proceedings.

18 THE COURT: Yes. Thank you.

19 MR. STEPHENS: I do have some objection, both in
20 initial closing and counsel's rebuttal closing. And I will
21 just take them in order as they happened.

22 The first one, your Honor, is an objection that
23 the government has sought to have an instructive amendment
24 of the indictment by switching theories and arguing
25 omissions that did not tell.

1 There was several references early in the
2 introductory closing argument about what the executives did
3 not tell the market, as opposed to the affirmative false
4 representations they're charged with about what they said
5 about their disclosures. So that's number one.

6 Number two would relate to the argument on the
7 issue of control in related-party transactions or affiliate
8 transactions when they were discussing the definition of
9 control. There's no evidence that the government's put
10 forward that there's been a violation of the term "control."

11 The evidence in the record came from Mr. Kitchens
12 where he confirmed that -- the government in these
13 transactions there is no control over Centurion. So to
14 suggest otherwise contradicts the facts in the case, and the
15 government knew it during the course of the closing
16 argument.

17 The third one is what is not a defense which came
18 up. And it was any suggestion that the defendants had good
19 character which came in, in spades in the testimony and is
20 in the Court's instruction.

21 The initial closing argument suggested to the
22 jurors that they should disregard that evidence because it
23 doesn't constitute a defense. That's legally and factually
24 inaccurate, so we would object to that.

25 In the rebuttal closing, the start of the rebuttal

1 closing was impugning the defense theories and suggesting
2 that the defense lawyers are trying to deceive the jury as
3 to what the evidence is. That's improper rebuttal argument.
4 We would object to that.

5 The last one relates to the Susan Powell testimony
6 that she confirmed on cross-examination, which I
7 demonstrated to the jury in my argument, that she understood
8 and was aware and approved of the IV-to-III transactions and
9 knew that they were occurring. The rebuttal closing just
10 suggested that that's not the case. That's factually,
11 inaccurate, and improper to close that way in rebuttal.

12 THE COURT: Okay. Well, I instructed the Jury
13 that they're to follow the instructions, so the instructions
14 will tell them what they can and cannot convict for. So I
15 think they're appropriately instructed and will follow that
16 instruction.

17 And then while not ruling, when you did object in
18 the final argument, I did instruct the jury that they are
19 the ones who will remember the evidence and what you-all
20 said. So I did give them that instruction, and I think that
21 applies across the board to your objection. So I will
22 overrule those objections.

23 Anything else?

24 MS. EGGERS: No, your Honor.

25 MR. STEPHENS: Nothing, your Honor.

1 MR. LEWIS: One brief side bar. Two minutes. One
2 minute.

3 THE COURT: Yes. Okay.

4 (A sidebar was had.)

5 (Recess.)

6 THE COURT: Okay. Let's be seated.

7 What's your response?

8 MS. EGGERS: Your Honor, the government exhibit
9 that concerns that specific topic are Government's Exhibits
10 420 and 498 to 507. I don't know if the defense has
11 identified any other exhibits.

12 MR. STEPHENS: Your Honor, we're still in the
13 process. We've got some of them, but I don't think we're
14 all the way through it yet.

15 THE COURT: Okay. Okay. Where are we?

16 MR. STEPHENS: Your Honor, we're just going
17 through the two last documents that will show a payoff. And
18 they're -- they're longer documents. They're trying to get
19 at them and then trying to find it. So we're doing it as
20 quick as we can, your Honor.

21 Thank you.

22 Your Honor, I apologize that took a while. We are
23 trying to do it as efficiently as we could.

24 So for us, we would agree with the numbers that
25 the government cited. To that, we would add Government's

1 Exhibit 507.1, and it's at page 6 inside the document. We
2 have Defense 3826 at page 54. Defendant 3828 and a range of
3 documents, Defendants' 3820 to 3840, which all relate to
4 this transaction.

5 And then three more, your Honor. Defendants' 115
6 and then Defendants' 118 at page 78 and defendant's 114 at
7 page 57, 57.

8 THE COURT: Okay. And what do you say?

9 MS. EGGERS: I'm sorry, your Honor, because I
10 didn't know what ones they are. I was just looking at them.
11 I need to look at the --

12 THE COURT: Yes, go ahead.

13 MS. EGGERS: I need to look at the actual party's
14 joint admitted exhibit list because 38 and 36 -- if I may
15 have one moment, your Honor. I'm sorry.

16 THE COURT: Yes.

17 MS. EGGERS: I'm not showing -- sorry. I'm sorry,
18 your Honor. I'm just double-checking.

19 THE COURT: Yes.

20 MS. EGGERS: I mean, this is including additional
21 records like a layout and that kind of stuff, which the
22 government is not saying that we have an objection to, but
23 the question seemed as though it was pretty specific. But,
24 obviously, whatever the Court would prefer to do.

25 I'm not really sure what 115 has to do -- I mean,

1 there appear to be defense exhibits that -- 115 is saying
2 that it's an email regarding a reimbursement Metro study, so
3 I'm not sure what that has to do with it. I'm sorry --

4 THE COURT: The Defendants' Exhibit 115 is the
5 8-K.

6 MS. EGGERS: I'm sorry. Yes.

7 THE COURT: So it seems to me they're asking for
8 backup documents for Frisco 113, and the date is
9 12-22-20 and it's in the five cent, four cent amount. So
10 how is an 8-K or a 10-K a backup document?

11 MR. STEPHENS: It explains the transaction, your
12 Honor. It's specific to the transaction.

13 THE COURT: They're asking for backup documents.
14 And so let me -- what are your documents, 420?

15 MS. EGGERS: Government's Exhibit 420, your Honor,
16 is that bank sheet with the bank accounts that went behind
17 it and the cash flow projections. And then 498 through 507,
18 which would include 507.1, those are the email
19 communications and advance requests for Frisco 113.

20 THE COURT: Okay. And then -- okay. So you want
21 to -- so the defense then wants to introduce this 8-K,
22 that's at 115. A 10-K. Two 10-Ks.

23 MR. STEPHENS: And, your Honor, I can give you a
24 little background there.

25 THE COURT: Well, I don't really need any

1 background. They're asking for backup documents. I don't
2 see how a 10-K or 8-K is a back-up document.

3 MR. STEPHENS: The 10-Ks can separate those. The
4 10-Ks are going to demonstrate that the loan was paid off.
5 That's what I'm getting from my colleague.

6 THE COURT: But a backup document is a document
7 that backs up the transaction internally. These are public
8 disclosures. I don't think they're asking for where the
9 public disclosures explaining these documents are. So I
10 don't read it that way, I guess.

11 MR. STEPHENS: Well, so, as a jury note, your
12 Honor, I don't know exactly what they're asking for. We're
13 trying to make sure that we're being comprehensive in
14 response to them, given how many documents are in the case,
15 so that if this helps answer their question, which is what
16 we're trying to do is get them straight to the page cite on
17 those 10-Ks. If the question is, is the loan paid off,
18 that's what those documents are going to show them.

19 THE COURT: Okay. Why don't we do this -- well,
20 okay. So what do you say to 3820, for instance?

21 MS. EGGERS: 3820 to 3840?

22 THE COURT: Yeah, Frisco 113 RSI Market Report,
23 3Q15, 3821 is an appraisal.

24 Let's bring them in.

25 MS. EGGERS: If we're including all those other

1 things, your Honor, there's also title records. If we're
2 going to start including title records, I believe it's
3 Government's Exhibit 318.

4 THE COURT: Okay. We're just going to ask them
5 what they want.

6 MS. EGGERS: Yes, sir.

7 (The jury was brought into court.)

8 THE COURT: Okay. Please be seated.

9 All right. Who is our foreperson?

10 Okay, ma'am. We've been going through documents
11 trying to interpret the note, but I thought it would be
12 better for us just to ask you.

13 Tell me exactly what you're looking for, because
14 we can read this very broadly, narrowly. However, we want
15 to give you everything you want, and we don't want to under
16 give you or over give you.

17 So can you just explain for us what you're looking
18 for?

19 THE FOREPERSON: So one of the jurors asked if --
20 they're wanting to see the journal of the payoff for the
21 retired loan from. I think it was 5056, if I'm not
22 mistaken.

23 THE COURT: Yes, you have 5056 here. Frisco 113,
24 Retired 5056, UDF IV.

25 THE FOREPERSON: Yes.

1 THE COURT: And then you have the 1.3 ending in 05
2 and 1.3 ending in 04.

3 THE FOREPERSON: Correct. They're wanting to see
4 the payoff documents for those.

5 THE COURT: And when you say "payoff documents,"
6 what exactly --

7 THE FOREPERSON: The lien releases.

8 THE COURT: The lien releases.

9 And do you remember seeing those presented to you
10 during the trial, or you just know they exist and they're in
11 the documents?

12 THE FOREPERSON: So one of the jurors does not
13 remember seeing that.

14 THE COURT: Yes.

15 THE FOREPERSON: We don't remember seeing that.
16 But we remember an email, where it says, "Please use these
17 funds to retire Loan 5056."

18 THE COURT: Yes.

19 THE FOREPERSON: And then those funds went back
20 to -- was it IV? IV.

21 THE COURT: Whichever one.

22 THE FOREPERSON: Whichever one.

23 THE COURT: Yes, I'm with you on that.

24 THE FOREPERSON: Yes.

25 THE COURT: So you for sure want the email?

1 THE FOREPERSON: Yes. Well, we have the email.
2 We saw the email.

3 THE COURT: You have the email?

4 THE FOREPERSON: So we don't need the email.

5 THE COURT: So you don't need the email?

6 THE FOREPERSON: I think where the issue is coming
7 in is we're having an issue with the disclosures on
8 affiliate and common borrower. That's where we're stuck.

9 THE COURT: Got you. Got you.

10 THE FOREPERSON: So that's where it's kind of
11 iffy. So we're looking at the disclosures. And that wire
12 is kind of where we're stuck --

13 THE COURT: Okay.

14 THE FOREPERSON: -- because we're thinking that,
15 if that amount -- where it says, "retired," we're thinking
16 paid off, that means there should be some loan documents
17 there to show --

18 THE COURT: I see.

19 THE FOREPERSON: -- that that loan was paid off.

20 THE COURT: All right.

21 THE FOREPERSON: And then, they're taking those
22 funds, I think it's 04, and bringing it back to the same
23 loan, right?

24 THE COURT: Okay.

25 THE FOREPERSON: So that means the collateral

1 should be on this end, instead of that end.

2 THE COURT: I think that helps quite a bit. We've
3 been working since the note came. Let us go back to work.

4 If we have other questions, we may bring you back
5 down here to ask you again.

6 THE FOREPERSON: Okay.

7 THE COURT: But thank you for working so hard. We
8 appreciate it very much. And we'll get right to work. So
9 if you'll go back and wait for us, we'll get it to you as
10 soon as we can.

11 (The following proceedings were had outside the
12 presence of the jury.)

13 THE COURT: Okay. Please be seated.

14 All right. So now what do you all say?

15 MS. EGGERS: I would say, your Honor, to also add
16 Government's Exhibit 318, and Government's Exhibit 323,
17 which will be the real property records that were filed in
18 the court record. And then also the title company records,
19 your Honor, based upon what was described to us.

20 THE COURT: Okay. So are some of these documents
21 electronic, or are they all hard copy, or a mix?

22 MS. EGGERS: So with regards, obviously, to the
23 8-Ks and that kind of thing the defense was requesting,
24 those are going to be over a hundred pages. So they're
25 digital.

1 THE COURT: Digital.

2 MS. EGGERS: The 323 that I just cited, that's 93
3 pages. So that would have been in paper.

4 Let me see. I'm pretty sure -- 318 is two
5 different PDFs. So it's going to be rather large, your
6 Honor, because there's a 318.1 and a 318.2, but it's the
7 receipts and disbursement ledger for Frisco 113, so --

8 It's actually just two PDFs, one of them is 47
9 pages, so it will be printed. That's, again, the supplement
10 to the title company.

11 And then 318.2, and there's a 318 -- all the way
12 to 318.4, so --

13 But those are the title company records, which
14 hearing the description, that sounds like what they're
15 possibly looking for.

16 THE COURT: And are your documents in hard copy or
17 digital, these exhibits?

18 MR. STEPHENS: Hard copy.

19 THE COURT: They are in hard copy?

20 MR. STEPHENS: Correct.

21 THE COURT: All right. And in terms of the
22 digital presentation, what do we have set up for them to
23 look at?

24 MS. EGGERS: They have a laptop, your Honor, back
25 there for the digital.

1 THE COURT: They do?

2 MS. EGGERS: They do. It's unencrypted. I mean,
3 I think there's a password, they have to initially log on.
4 And they have a thumb drive with both parties' exhibits on
5 it. So they have them both digitally and printed.

6 THE COURT: All right. So I think what I'll say
7 then is, in response to your note, we refer you to: I'll
8 list all of these exhibits. You have some pinpoint cites.

9 And I think I need to say, you know, please note
10 these will be -- all will be hard copies, except for
11 whatever exhibits, they will be digital.

12 MS. EGGERS: Let me double-check and make sure
13 that --

14 THE COURT: Because all of theirs are hard copies.

15 MS. EGGERS: Yeah, ours might all be hard copy
16 too, your Honor. I'm just double-checking one more.
17 Because I haven't seen something yet that was over
18 100 pages. So they're quite possibly all right there in
19 hard copy. I believe all the government's are in hard copy.

20 MR. STEPHENS: Your Honor, and with that
21 additional information from the Jury, we are citing to
22 Defendants' 3820 through 3840.

23 THE COURT: You already did.

24 MR. STEPHENS: And I'm just confirming that --

25 THE COURT: But all of those were admitted or not

1 admitted?

2 MS. EGGERS: They were.

3 MR. STEPHENS: Yes.

4 THE COURT: Yes, okay. Right. So give me a
5 second to write this out.

6 Yes?

7 MR. STEPHENS: And, your Honor, I'm sorry. I'm
8 just confirming that you still have for us Government's --

9 THE COURT: 507 is in.

10 MR. STEPHENS: -- 507.1 and .6.

11 THE COURT: Well, I'm just giving them 507.

12 MR. STEPHENS: Okay.

13 THE COURT: Okay. Go show that to them. Just go
14 show it to them.

15 MS. EGGERS: Yes, sir.

16 THE COURT: Are we good?

17 MR. STEPHENS: Yes, your Honor.

18 THE COURT: Okay. I will sign it now and Melissa
19 will take it in.

20 Okay. We will wait to hear from them. They had
21 earlier indicated they were going to leave at 6. I don't
22 know if that's still the case or not.

23 MR. PELLETIER: Judge, do you bring them out
24 before you release them or do you just release them?

25 THE COURT: I'll just release them, and we'll let

1 you know that they're released.

2 (The proceedings adjourned at 5:45 p.m.)

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C E R T I F I C A T E

I, Zoie M. Williams, RMR, RDR, FCCR certify that the foregoing is a transcript from the record of the proceedings in the foregoing entitled matter.

I further certify that the transcript fees format comply with those prescribed by the Court and the Judicial Conference of the United States.

This 21st day of January 2022.

s/ Zoie M. Williams
s/ Kelli Ann Willis
Official Court Reporters
The Northern District of Texas
Fort Worth/Dallas Divisions

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